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October 27, 1995

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED
OCT 27 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Mr. Caton:

Re: GEN Docket No. 90-314

Yesterday, Betsy Granger, Senior Attorney, Pacific Bell Mobile Services; Sherry Herauf, Director, Federal Regulatory Relations, Pacific Telesis Group and I met with Elias Johnson, Attorney, Policy Division and Michael Wack, Deputy Chief, Policy Division, Wireless Bureau to discuss the PCS Safeguards Plan of Pacific Bell, Nevada Bell, Pacific Bell Mobile Services, and Pacific Telesis Mobile Services, particularly with respect to how existing accounting safeguards and reports apply. The attached decision was given to Mr. Johnson. Please associate it with the above referenced proceeding.

We are submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



cc: Elias Johnson
Michael Wack

Attachment

No. of Copies rec'd
List ABCDE

021

D. 92-01-007, C. 9819
(January 10, 1992)

Paul Hubbs Construction Co. authorized to establish a new production area and zone rates for Riverside, San Bernardino, Los Angeles, and Orange counties under *Minimum Rate Tariff 17-A*.

D. 92-01-008, C. 9819
(January 10, 1992)

Ortega Rock, Inc., authorized to establish zone rates for Item 60 commodities under *Minimum Rate Tariff 17-A*.

D. 92-01-009, I. 90-01-032
(January 10, 1992)

Order terminating docket since the subject matter involved interstate rather than intrastate transportation (*Hydra Trucking, Inc.*).

D. 92-01-010, C. 9819
(January 10, 1992)

Order expanding the applicability of zone rates for Area 33T for *C. L. Pharris Sand & Gravel, Inc.*, under *Minimum Rate Tariff 17-A*.

D. 92-01-011, C. 91-08-017
(January 10, 1992)

Order dismissing case for lack of prosecution by the complainant (*Mary A. Hudson v. Pacific Gas & Electric Co.*).

**D. 92-01-012, A. 88-12-005,
I. 89-03-033**
(January 10, 1992)

Order on rehearing awarding *Toward Utility Rate Normalization (TURN)* an additional \$1,120 in compensation for its costs of participating in rate proceedings of *Pacific Gas & Electric Co.*

D. 92-01-013, A. 91-10-022
(January 10, 1992)

Certificate granted to *Dial Page, Inc.*, to construct and operate additional one-way radiotelephone paging facilities in the San Luis Obispo area.

Re Pacific Gas and Electric Company

Decision 92-01-014
Application 91-03-049

Deazel, Inc.
v.

Pacific Gas and Electric Company
Decision 92-01-014
Case 90-07-068

California Public Utilities Commission
January 10, 1992

ORDER clarifying D. 91-06-050 (40 CPUC 2d 627) to provide that the commission's approval of a settlement agreement modifying payments for purchased power was not conditioned upon a further reasonableness review before the purchasing utility could recover the payment costs in rates. It is noted that the settlement did not increase payment obligations, but instead increased the seller's performance commitments.

(ABSTRACT OF DECISION. THE FULL CASE TEXT IS OMITTED.)

1. EXPENSES, § 122 — Electric utility — Purchased power — From cogeneration facility — Modified payment schedule — Necessity of reasonableness review.

(CAL.) Where the commission had approved a power purchase settlement between an electric utility and an enhanced oil recovery (EOR) cogeneration facility, which settlement did not increase purchase payments but instead increased the EOR facility's performance commitments, the commission found that no further reasonableness review would be necessary before the utility could recover the payment costs through rates.

D. 92-01-015, A. 91-08-044
(January 10, 1992)

Di Salvo Trucking Co. authorized to increase highway common carrier rates by 5%, increasing annual intrastate revenues by \$781,764.

Re Regulation of Radiotelephone Utilities

Decision 92-01-016
R. 88-02-015

California Public Utilities Commission
January 10, 1992

INTERIM OPINION declining to deregulate radiotelephone carriers or to reclassify them as end users.

1. PUBLIC UTILITIES, § 117 — Regulatory status — Radiotelephone carriers — Factors.
(CAL.) Radiotelephone carriers are public

utilities because they offer telecommunications services to the general public via the public switched telephone network.
p. 9.

2. CERTIFICATES, § 26 — When required — Radiotelephone carriers — Factors.

(CAL.) Because they are public utilities, radiotelephone carriers must obtain a certificate from the commission prior to initiating or discontinuing service, or constructing or expanding facilities.
p. 9.

3. EMINENT DOMAIN, § 4 — Right to appropriate property — Radiotelephone carriers — Factors.

(CAL.) Because they are public utilities, radiotelephone carriers have the power to condemn property needed in operations.
p. 9.

4. SECURITY ISSUES, § 38 — Necessity of commission approval — Stock transactions and transfers — Relaxation of approval requirements — Radiotelephone carriers.

(CAL.) Because of continuous change and consolidation within the industry, the commission relaxed its preapproval requirements for stock transactions or transfers associated with radiotelephone carriers.
p. 9.

5. SERVICE, § 451.2 — Telephone — Radiotelephone services — Rural areas — Universal service goals.

(CAL.) Needing more information on whether two-way mobile radiotelephone services are essential and a substitute for basic local exchange service in rural areas, the commission declined to make universal service a goal of radiotelephone services.
p. 10.

6. MONOPOLY AND COMPETITION, § 83 — Telephone — Radiotelephone services — Effect of competition on regulatory status.

(CAL.) Although finding that radiotelephone services were subject to effective competition and a growing market, the commission

declined to deregulate radiotelephone common carriers.
 p. 13.

7. PUBLIC UTILITIES, § 117 — Regulatory status — Radiotelephone carriers — Paging service component — Factors.

[CAL.] Although radiotelephone carriers have evolved to the point where they mostly provide just paging services, the commission declined to deregulate them, because their services, even if "nonessential" and subject to effective competition, are still telecommunications services offered to the general public through use of the public switched telephone network.
 p. 13.

8. PUBLIC UTILITIES, § 117 — Regulatory status — Radiotelephone carriers — Carrier versus end-user status.

[CAL.] The fact that radiotelephone carriers have evolved to the point where they mostly provide just paging services is irrelevant to the classification of radiotelephone carriers, and therefore, the commission declined to reclassify them as end users rather than carriers.
 p. 15.

9. TELEPHONES, § 10 — Interconnection — Fees — By contract or tariff — Radiotelephone carriers.

[CAL.] Fees for interconnection between radiotelephone carriers and local exchange carriers should be tariffed rather than based on individually negotiated contracts.
 p. 17.

10. CERTIFICATES, § 53.4 — When required — Radiotelephone carriers — Federal licensing as a factor.

[CAL.] Radiotelephone carriers must be certificated by both the state commission and the Federal Communications Commission, but carriers may file their state and federal certificate applications simultaneously.
 p. 20.

11. CERTIFICATES, § 29 — When required — Service area expansion — Radiotelephone

carrier.

[CAL.] The commission retained certification requirements for expansions of service areas by radiotelephone carriers, which requirements allowed uncertificated extensions only for "minor" additions (affecting 10% or less of the applicant's or other carrier's area).
 p. 20.

12. RATES, § 559.1 — Telephone rate design — Radiotelephone services — Pricing flexibility.

[CAL.] Because rates for paging and two-way mobile radiotelephone services are based on competition and market factors rather than cost of service, radiotelephone carriers were granted limited pricing flexibility, so that rate reductions could go into effect on one day's notice while minor rate increases would require five days' notice and major rate increases would require 30 days' notice; a minor rate increase would involve less than one percent of the carrier's total intrastate revenue or 5% of the affected service's rates.
 p. 21.

13. PAYMENT, § 63 — Security deposits — Return of deposit — Radiotelephone carriers.

[CAL.] Radiotelephone carriers were directed to abide by the same security deposit rules as other telephone carriers, meaning that deposits must be returned to customers if the carrier ceases operations.
 p. 22.

14. PUBLIC UTILITIES, § 52 — Regulatory requirements — Use of agents — Radiotelephone carriers.

[CAL.] The use of agents by radiotelephone carriers affects neither their regulatory duties with the commission nor their service duties with customers.
 p. 23.

15. ACCOUNTING, § 42 — Telephone carriers — Separate radiotelephone carrier division — Separation of operations.

[CAL.] For accounting purposes, local exchange telephone carriers were instructed to separate out their wireline basic operations from

nonwireline radiotelephone operations.
 p. 24.

16. TELEPHONES, § 5 — Commission jurisdiction — Radiotelephone services — Customer complaints — Environmental

compliance.

[CAL.] The commission retained oversight over both customer complaints and environmental compliance requirements associated with radiotelephone carrier operations.
 p. 25.

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Appendix A — Complete list of OIR questions.

Appendix B — List of parties filing comments and replies.

Appendix C — Chart of each party's answer to each OIR question.

Appendix D — Service List

Appendix E — Revised Rule 18(c)

BY THE COMMISSION:

INTERIM OPINION

1. Summary of Decision

In 1988 we began to review the regulation of various types of telephone utilities in order to assure that their regulation was compatible with the existing business and technical environment. Since that time, we have ordered revisions in the regulation of Pacific Bell (Pacific) and GTE California, Inc. (GTBC),¹ cellular providers,² and nondominant interexchange carriers (NDIECs).³ We now turn to the regulation of radiotelephone utilities (RTUs).

We exerted jurisdiction over RTUs in 1961. During the period 1961 to 1988 we pursued three separate investigations of the RTU industry to update its regulation. In these previous proceedings, we shaped our regulation of RTUs to enhance the federal policy of RTU competition. We instituted this proceeding in 1988 after the Federal Communications Commission (FCC) adopted a more extensive open entry policy in allocating radio channels. Our general purpose in this proceeding is to determine the status of competition in the RTU industry and whether our RTU regulation needs revision to be compatible with recent FCC regulation. In our order instituting this rulemaking proceeding (Order), we asked the industry to comment on 27 specific questions.⁴ RTUs, local exchange companies (LECs), Division of

Ratepayer Advocates (DRA) and other interested parties filed comments and reply comments addressing these questions.⁵

The comments and reply comments show a general consensus on the status of competition in the RTU industry. DRA presents a study of the competitive factors in the RTU industry for the period 1984-1987. This study is based upon Commission records, such as annual reports and RTU certificates of public convenience and necessity, and individual surveys conducted specifically for this proceeding. DRA's study summarizes: the number of RTU operations; revenues of large, medium and small firms; capacity of FCC channels; size of plant per firm; quality of service; and reasonableness of rates. DRA uses these statistics to perform two market concentration studies, the Herfindahl index and the concentration ratio. Based upon the results of these studies, DRA concludes that there is growing competition in the RTU industry. The parties do not dispute this conclusion and agree that competition is stimulating both service of high quality and lower rates.

There are two major controversies in this proceeding: whether RTUs should be reclassified as end-users, and whether RTUs may lawfully be deregulated. If regulation is to continue, the parties also dispute whether interconnection rules should be strengthened and how existing certification, expansion and tariff filing rules should be relaxed.

DRA recommends that we remove all

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existing RTU regulation in phases. DRA recommends that in an interim order we detariff all RTU services except those in rural areas and order a study of basic service in these areas. DRA recommends that we require in the same interim order, the reinvestigation of RTU classification in a separate proceeding, that LECs prepare accounting procedures to separate RTU affiliates and that interconnection negotiation be conducted in "good faith" with a 6-month time limit for instituting the requested interconnection. After we resolve the classification of RTUs, the regulatory treatment of basic service in rural areas, separate accounting procedures for RTUs affiliated with LECs and interconnection problems, DRA recommends we deregulate the entire RTU industry in a final order. Several parties agree that RTUs may lawfully be deregulated.

Other parties argue that the law does not allow detariffing or deregulation and that existing certification and tariff filing rules should be relaxed. A majority of these parties also recommend more stringent rules governing the RTU/LEC interconnection arrangement. Some agree to DRA's recommended "good faith" bargaining with a time limit for instituting interconnection services. All RTUs oppose DRA's recommendation to reinvestigate their classification as co-carriers.

Parties also comment on these issues: the Commission's role under the California Environmental Quality Act (CEQA), RTU agency, predatory pricing, cross-subsidies, consolidation and customer complaints.

After review of all comments and replies, we conclude that existing statutes mandate RTUs to file tariffs and that the classification of RTUs needs no reinvestigation at this time. We find that interconnection is a monopoly service provided by LECs and warrants stringent regulation. Therefore, we require each LEC presently offering RTU interconnection services to file an application proposing a tariff for RTU interconnection service, including all terms, conditions and rates for each type of service. The resulting RTU interconnection tariffs will be applicable to Commission-regulated RTUs and may be used by RTUs only to provide RTU service. Once effective, these tariffs will replace

existing LEC/RTU intercompany agreements and will be governed by all applicable statutes and Commission general orders, including General Order (GO) 96-A.

We agree that competition warrants relaxed certification and rate reduction rules. Therefore, we authorize simultaneous filing of FCC and Commission applications, with qualifying conditions, and we authorize rate reductions effective on one day's notice and minor increases on five days' notice. However, we find insufficient justification to relax existing expansion rules.

We order further proceedings in this docket to:

1. review LEC surveys of basic telephone service in their respective rural areas;
2. receive comments on the progress of Basic Exchange Telecommunications Radio Service (BETRS) and cellular service alternatives in rural areas;
3. determine whether RTU service in rural areas is basic telephone service;
4. review LEC proposed accounting procedures for the accounting separation of RTUs affiliated with LECs; and
5. receive DRA's updated report on RTU industry concentration.

Pursuant to the original procedure previously established for this rulemaking (Order, p. 12, Item 27), the proposed decision of ALJ Berman was mailed on October 23, 1991. Pursuant to Rule 87, we deviated from Rule 77.2 of the Rules of Practice and Procedure (Rule) to extend the comment period on the proposed decision to 30 days and the reply period to 10 days. Fourteen parties' duly filed comments and five parties filed reply comments. We have made the technical and clerical revisions suggested by the parties. We have added clarifying language where parties have suggested clarity is needed. We have adopted two minor revisions: requiring the RTU tariff to be filed in a future application, instead of an advice letter; and, requiring that the FCC public notice period is expired before an application for Commission certification may be filed. In all other respects, the proposed decision is unchanged.

Prior to the adoption of the modified Rule 18(o), it will be forwarded to the Office of Administrative Law (OAL) in accordance with applicable provisions of the Government Code. At the conclusion of the OAL notice requirements, we intend to adopt the proposed Rule 18(o) contained in Appendix E.

2. Procedural Matters

On February 10, 1988, this Commission invited all RTUs, LECs, and other interested parties to comment in this rulemaking proceeding on the status of the radiotelephone industry and the appropriateness of the present regulatory scheme for paging and conventional two-way radio services. After outlining Commission caseload, the structure of the RTU industry, and the current regulatory framework, the Commission indicated that it would like to revisit its policies for regulating radiotelephone services. The Commission's overriding interest is whether less-restricted competition might lead to cheaper or better services and whether the benefits of the current regulatory system exceed the cost paid by RTUs to comply. (Order, pp. 7-8.) The Commission listed 27 questions to be addressed in comments.⁶ All RTUs are respondents in this proceeding. The Commission rulemaking order was mailed to respondents, all LECs, and known interested parties. Comments were due on or before April 22, 1988.

On March 16, 1988, DRA requested that the filing date for comments be extended to June 3rd, and for reply comments to June 24th. DRA asserted that its investigation would not be complete until April 22nd, and that an incomplete investigation could produce unnecessary requests for evidentiary hearings. Since there was no objection, the assigned administrative law judge (ALJ) granted the extension.

On June 2, 1988, DRA requested a further extension to June 7th, stating that its comments exceeded 100 pages and could not be timely reproduced. DRA represented that it would not read any comments filed on June 3rd until after it had filed its comments. DRA's comments were filed on June 6th. Since there are no objections to this request and reasonable cause is given, we accept DRA's late-filed comments.

On or before June 6, 1988, 14 parties filed comments, including DRA. On or before July 1, 1988, eight parties filed reply comments and the proceeding was considered submitted.⁷

On June 28, 1988, Mobilecomm of California, Inc. (Mobilecomm), stated that its reply was late due to other parties' comments being received late as well as the need to obtain approval from various corporate levels for its own reply comments. Mobilecomm requested a one-week extension and filed reply comments on July 1, 1988.

On July 8, 1988, two parties moved that their late-filed comments be accepted. Allcity Paging and Crico Communications Corporation (Allcity and Crico) represented that comments were filed late because they did not receive many of the other parties' comments until a few days before the June 24th deadline, including DRA's comments, which were received on June 21st. As of the date of their request, Allcity and Crico represented that they still had not received all comments filed in the proceeding.

The explanations given for late filing of reply comments given by Allcity, Crico, and Mobilecomm are reasonable. No party objected to these motions. These motions are granted and the late-filed reply comments are accepted.

On September 13, 1988, respondents Allcity and Radio Relay Corporation of California (Radio Relay) filed a motion to convert this rulemaking proceeding into an investigation where a prehearing conference and evidentiary hearings would be set to address five controversial issues. Respondents alleged that there were certain errors in the background facts upon which various parties based their positions. However, respondents did not explain which facts were in error. They opposed DRA's recommendation to reverse RTUs' status as telephone corporations, and requested that hearings be held before such a decision is made. Respondents also requested that this issue be referred to the Commission's legislative staff or excluded from consideration at this time.

Allcity and Radio Relay do not indicate which facts are in error in their motion, nor have they included this information in the Reply Comments. Thus, the motion is based on speculation and must be denied.

On October 13, 1988, Allied Radiotelephone Utilities Association (Allied), which represents several RTUs, filed a motion to set a prehearing conference in response to Allcity and Radio Relay's motion to convert the rulemaking into an investigation. Allied agreed that hearings were required prior to any change of RTU status. However, instead of hearings, Allied requested a prehearing conference and workshops prior to a final decision in this matter. Again, this respondent's main concern was changing RTU status without a hearing. Since we do not herein order a change in RTU status, this motion is also denied.

3. The History of RTU Regulation

The FCC allocates radio frequencies or channels to domestic public land mobile radio carriers (public radio carriers) and private radio carriers. The FCC includes radio common carriers (RCCs) and miscellaneous radio common carriers (MCCs) in the category of public radio carriers. The frequencies allocated to public carriers are separate from those of private carriers. Public radio carriers are authorized to provide radiotelephone services to the general public; private radio carriers may provide services to a select group of customers.

[1-4] This Commission classifies public radio carriers (RCCs and MCCs) licensed by the FCC as regulated RTUs and telephone corporations because they offer telecommunication services over the public switched telephone network to the general public. Regulated RTUs may provide one-way paging, two-way mobile, maritime mobile, air to ground or cellular mobile services. RTUs offering services to the general public within California are under the jurisdiction of this Commission. We have not exerted jurisdiction over private radio carriers licensed by the FCC. (Re Regulation of Radiotelephone Utilities (1961) 68 CPUC 756, (1978) 83 CPUC 461 and (1983) 12 CPUC 2d 363.)

RTUs are subject to statutory regulations governing telephone corporations. Thus, RTUs must be certificated under Public Utilities Code § 1001 and comply with §§ 454, 455, 489, and 491 (reasonable rates, tariff filing and notice of

proposed rate changes). RTUs must obtain Commission approval under § 1000 prior to constructing new facilities, expanding operations or discontinuing service. We require RTUs to file with us the same annual report that is filed with the FCC. We have authorized RTUs to file FCC-approved tariffs.

Because they are public utilities, RTUs have the power to condemn property under §§ 610-624 and, initially, we required RTUs to seek Commission approval of stock transactions (§ § 816-830) and the authority to transfer or encumber utility property (§ § 851-855). (We later relaxed the stock transaction and transfer requirements, discussed below.) RTUs must also meet the environmental standards set by the CEQA. As the lead agency under CEQA, this Commission decides whether these standards are met.

We have investigated the regulation of RTUs on three occasions since 1961.

In 1966, we joined two RTU complaints for resolution with a generic regulatory investigation. We concluded that the public interest in providing telecommunications services requires an RTU to be interconnected to the public switched telephone network operated by an LEC. We determined that the RTU is responsible for maintaining its landline radio equipment and the LEC is responsible for the telephone equipment when an RTU is interconnected with an LEC. We found the Pacific Telephone and Telegraph Company's (the predecessor of Pacific Bell, or Pacific) proposed tariff to be reasonable and authorized the tariff to be accompanied by an executed intercompany agreement. We granted the RTU the option of providing non-Bell interconnection equipment or obtaining it from Pacific. We prohibited the RTU from connecting non-utility business and utility business lines or conducting improper switching. We authorized RTUs to obtain as many telephone lines as needed for its operations. (Re Pacific Telephone and Telegraph Company (1966) 66 CPUC 202.)

In 1978, the FCC adopted a new open entry policy for local public paging operations and opened additional paging channels. The permits for these new channels were based solely upon an applicant's technical criteria. In

licensing proceedings, the FCC made no inquiry into public need, convenience and necessity, or to channel compatibility between different local service areas. In response to this federal action, we again investigated our RTU regulation to make it compatible. We required all RTUs, except private mobile radio carriers, to file service territory maps to aid parties in resolving boundary disputes. We gave RTUs the right under Rule 10.1 to file formal complaints to resolve intercarrier boundary disputes. (D.88513.)

In 1983, pursuant to the federal and state policy of open entry, we revised Rule 18(o) placing on protestants in an application proceeding the burden of showing that no public need existed for certification or expansion. (D.83-08-059.) In the same decision, we required RTUs to first obtain an FCC license before filing an application for certification with this Commission.

Thereafter, from 1983 to 1987, we sought to keep all carriers offering new telephone services on equal regulatory footing because the services of these carriers compete in the same markets throughout California. We updated RTU regulation on a case-by-case basis to reflect the same regulatory flexibility as that of cellular operators and NDIETs. For example, in 1987 the Commission exempted RTUs from § 816-830 (stock transactions) and § 851 (transfers and encumbrances to secure debt), and delegated authority to the Executive Director to approve uncontested applications for the transfer of RTU ownership. (D.87-10-035.) Several months later we relaxed the requirements contained in GO 96-A as they applied to RTUs by reducing from 40 days to 30 days the effective date for RTU advice letter filings which do not increase rates. At the same time we also exempted RTUs from the requirement that advice letter filings may not exceed \$750,000 in revenues per year. (D.88-05-067.)

In 1988, prompted by rapid changes in radiotelephone technology and market structure, and by complaints from RTUs regarding our regulatory framework, we instituted this rulemaking proceeding. We asked 27 specific questions about the RTU industry under the sub-headings of: goals and regulatory

framework; competition, economic efficiency and market power; RTUs and universal service; interagency issues; and generic and procedural issues.

4. Goals of RTU Regulation

DRA recommends the same goals for RTU regulation as those that are generally applied to the regulation of other telecommunications utilities: universal service, economic efficiency of pricing and production, encouragement of technological advancement, financial and rate stability, full utilization of the local exchange network, avoidance of cross-subsidies or anticompetitive behavior, and inexpensive and efficient regulation.⁹ To this list, several parties propose that we add our statutory duties of ensuring reasonable rates and reliable service. Other parties recommend goals more specifically related to the RTU industry: equal regulation of wireline and nonwireline RTU providers, facilitating the best use for the limited radio frequency spectra, and equitable terms for the interconnection of an RTU to the LEC.

[5] The only goal that is disputed by the parties in this proceeding is universal service. This goal requires that telephone corporations make basic telephone service available to all members of the public within its service territory at an affordable price. This goal is generally applied to telephone corporations. However, we recently concluded that universal service is not yet an appropriate goal for the high cost cellular industry because it will serve only five percent of the population in the near future and is undergoing rapid technological change. (D.90-06-025.)

In this proceeding, some parties question whether universal service is an appropriate goal for the RTU industry since they classify paging and two-way mobile service as discretionary — not essential — service. Other parties indicate that RTU service is the sole means of telephone communication in certain segments of their service areas, implying that it is, indeed, essential service.

Pacific finds that RTU service constitutes basic exchange service in a few remote, rural areas where landline telephone service via

telephone poles is impossible because of the terrain. Pacific recommends that RTU service be regulated in these areas in the same manner as basic exchange service, including measures to make the service affordable by all customers. However, Pacific believes that nationwide RTU development will require regulators to recognize that paging and improved mobile service¹⁰ are not basic, essential services and that LATA boundaries do not limit radiotelephone service.

MetroMedia does not believe any basic exchange service is provided by RTUs and contends that even if it is, RTUs have met their social obligations for affordable service through programs such as Life Page Service, a paging service provided free to organ transplant organizations.

GTEC does not believe that rural RTU service is basic exchange service. However, even if it is, GTEC points out that the FCC has recently allowed more telephone service options which will increase radiotelephone competition in rural areas.¹¹ Thus, GTEC contends that these new options may affect the availability of RTU service in rural areas and the question of whether RTU service is nondiscretionary basic telephone service in these areas.

California Autofone and Radio Electronic Products Corporation (REPCO) serves northern counties with extensive rural areas of mining, logging and agri-business economies. REPCO also comments that terrain in many of these areas makes traditional landline telephone service impossible. REPCO contends that RTU service is better suited for these areas and that frequencies serving its rural customers are often congested. Thus, in these places REPCO believes RTU service is essential and recommends that the Commission continue to regulate rural service as basic exchange service to assure its availability to all customers.

DRA is unable to evaluate all rural areas because information about basic service in rural areas is not routinely filed with the Commission. DRA estimates that 1% - 1.5% of RTU customers live in rural areas. DRA's overall recommendation is to deregulate the entire RTU industry in two phases. Initially, in an interim

order all RTU service, except two-way mobile service in rural areas, would be deregulated. DRA recommends that the Commission order all two-way mobile operators to provide the Commission the following information within 90 days after an order in this proceeding is signed:

1. The total number of rural and marine customers within the service territory;
2. The number of customers who use two-way mobile service instead of universal service;
3. The options available to rural customers for obtaining services similar in quality and price to two-way mobile service.

After receiving this information, DRA recommends that the Commission decide how two-way mobile service in rural areas should be regulated. DRA recommends that the regulation and rates for rural customers remain the same until the conclusion of the rural customer study. After the issue of rural service and other problem areas are resolved, DRA recommends that we deregulate the entire RTU industry.

4.1 Discussion

We agree that we need more complete information about rural two-way mobile service in each RTU service area before we can resolve the dispute over basic service in rural areas. Therefore, we will adopt DRA's recommendation to obtain more extensive information about basic exchange service in these areas. We will order all RTUs and all LECs offering two-way mobile service to survey and report the number of rural customers relying solely on two-way mobile service for basic exchange (universal) telephone service. We will consider "rural" to designate an area eligible for Rural Radio Service as defined in FCC Rules and Regulations Part 22.2, Definitions.¹² In addition, we need updated information on the status of BETRS and rural cellular service offerings in order to evaluate whether two-way mobile service in rural areas is basic service. We will request all parties to address the issue of progress of these service options in rural areas. Since we do not order deregulation in this proceeding (discussed

below) and since we believe the revisions to RTU regulation which we now adopt will benefit rural service, we will make this order applicable to existing rural RTU operations, contrary to DRA's recommendations.

5. Competition in the RTU Industry

Allied contends that the goals of RTU regulation have been achieved in urban areas under competition. Allied indicates that early paging systems transmitted short messages and "beeps" over a limited area, often relying on operator intervention. Technological improvements now enable pagers to transmit information, including printed copy, automatically. Allied estimates that these technological advances have increased RTU use of the LEC public network with RTU services contributing 10% of total end office switching. Allied calculates that in 1988, calls placed by RTUs or their customers contributed \$18 million in additional annual LEC revenue, return calls to pagers contributed \$14 million, and interconnect fees contributed \$9 million. Thus, in Allied's opinion, competition has prompted technological advancement, increased RTU use, and resulted in larger LEC revenues. Allied contends that this increased RTU use has significantly contributed to full use of the wireline network and RTU radio frequencies, which is one of our regulatory goals. At the same time, Allied contends, improvements in technology and the existence of competition have reduced the price of RTU services and produced a good quality of service. Other parties agree that the RTU industry is highly competitive.

DRA bases its conclusion on a study of the factors generally assessed in a competitive environment: number of carriers, independence of carriers, revenues, number of customers, number of competing carriers within same areas, basis of competition, price of services, quality of service, and market shares of carriers. DRA presents these facts in its study of the RTU industry for the period 1984-1987:

— The RTU industry has grown from 40 to 91 certificated carriers.¹³

— The number of paging customers

increased 73%, paging units increased 80%, and total paging revenues rose 33%. At the same time, two-way mobile service declined 4% and represents 10% of total RTU services. Paging services represent 90%.

— 40 RTUs are operated by companies holding more than one certificate and 33 were independently owned.

— The largest RTUs are two LECs and three Regional Bell Operating Company (BOC) affiliates. There are seven medium-sized firms and over 50 small firms. Twenty-four firms are inactive.

— The largest RTU firms earn 65% of total paging revenues, the medium-sized firms 2-8%, and the small firms 33-39%. Small firms also earn 40% of two-way mobile service revenues.

— There is one county in California with no RTU service and four counties with only one RTU. However, in the remaining counties two to five independent firms compete.

— Price is the prime means of competing. As a result, RTU rates have been reduced 30-40% from 1984-1987.

— Quality of service is the second method of competition. In order to assess the quality of service, DRA reviewed the number of customer complaints. During 1985-1987 customer service complaints decreased from 13 to 2 and customer billing complaints decreased from 49 to 12.

— Technical advances in radiotelephone transmission and reception have improved service. Therefore, DRA reports that RTU service quality is good in urban areas.

— Using the Herfindahl index¹⁴ and concentration ratio,¹⁵ DRA finds very low levels of concentrated market power. In these methods of market measurement, DRA counts affiliated firms as one company. The resulting concentration levels are comparable to those of the soap and food industries.

Radio Relay and Electropage, Inc. (Electropage) dispute the existence of 12 competitors in Alameda County. They allege that 9 of these companies should be excluded from this count

because of marginal service territory, alter ego relationships or inactive operations. However, even with these exclusions, there remain 3-4 competitors in each location described by DRA.

Parties do not dispute the other numerous facts derived from DRA's study of the RTU industry for the period 1984 to 1987. DRA's market study does not evaluate sub-markets within the state. However, PacTel Paging (PacTel) presents the results of the H-index and concentration ratios based upon the metropolitan RTU markets in San Francisco, San Diego, Fresno, and Los Angeles. These results also show low levels of market concentration.

[6] Based upon Allied, DRA and PacTel's market information and the supporting comments of a majority of the parties, we conclude that the RTU industry is highly competitive and that consolidation has not adversely affected the industry. However, the industry continues to grow and consolidate and statewide networks are being certified. We desire to update information on the market factors and impact of consolidation to verify that these conclusions are still valid. This study should include known sub-markets, such as metropolitan areas, and other information DRA deems pertinent to our inquiry about the market and consolidation. Therefore, we will order DRA to update its market and consolidation studies and to file and serve the study on all parties to this proceeding within 120 days after the effective date of this order. Parties will have 20 days to comment on DRA's updated study.

6. Deregulation of RTUs

[7] When we exerted jurisdiction over RTUs in 1961, both the paging and two-way mobile telephone services were in their infancy and both had few customers. We indicated that under "changed circumstances" we may reach the conclusion that regulation of the RTU industry was not warranted. (D.88513.)

In this proceeding, DRA contends that "changed circumstances" warranting the removal of Commission regulation have occurred. The changed circumstances to which DRA refers are certain findings in its survey of the RTU industry for the period 1984-1987.

During this period, DRA finds that two-way mobile service is 10% of the RTU industry and paging is 90%. DRA contends these new circumstances justify deregulating the industry. We disagree.

The "changed circumstances" to which we referred in our 1978 decision were factors which place entities outside our regulatory jurisdiction, namely, the lack of a public interest to regulate a public utility service and the lack of a service offering to the general public. Thus, public utility service to select groups of customers or service which involves no public interest does not require Commission regulation. Accordingly, in our 1978 decision, we expressly excluded from regulation "shared repeater" services and private services. We stated that should the circumstances of RTUs change, they may not require regulation in the future. Hence, in order to remove RTUs from Commission regulation, a party must show that no public interest in regulating RTUs exists or that RTU services are no longer offered to the general public. DRA does not adequately address these issues in this proceeding. In fact, the comments of numerous parties, including DRA, reflect the opposite opinion — that regulation of interconnection is needed to protect the public interest in obtaining RTU services.

In addition, our 1978 decision was not based on the division of paging and two-way mobile customers within the RTU industry. We concluded that RTUs must be regulated because their services are offered to the public and make use of the public switched telephone network. We relied on the statutory definition of a "telephone line" to reach this conclusion. Section 233 defines a telephone line as "... wires . . . to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires." (Emphasis added.) Both paging and two-way mobile telephones require the use of the wireline network and are services the RTU offers to the general public. Therefore, we cannot agree that the recent growth of paging alone justifies deregulation.

DRA and numerous commenters interpret § 489, 495 and previous Commission cases to permit us to deaffirm or deregulate the RTU

industry. Other commenters take the opposite view. They interpret these references as mandating RTUs to file tariffs.

Section 489(a) states that:

"The Commission *shall*, by rule or order, require every public utility other than a common carrier¹⁶ to file with the commission . . . schedules showing all rates . . . together with all rules, contracts, privileges and facilities which in any manner affect or relate to rates . . . or service." [Emphasis added.]

In addition, § 495 states that:

"Every telegraph and telephone corporation *shall* print and file with the commission schedules showing all the rates and classifications for the transmission of messages or conversations between . . . points." [Emphasis added.]

Under the legal rules of statutory construction, the term "may" is generally interpreted as permissive, while the term "shall" is generally interpreted as mandatory. (Cal Jur 3d, Statutes, § 147.) The term "shall" is used in both § 489 and § 495 in reference to filing tariff schedules. Therefore, we have no discretion to debar or deregulate RTUs. Such action requires changes in existing statutes by the legislature.

Parties commenting on the issue of deregulation offer legislative solutions should we reach this conclusion. They recommend that the Commission support legislation that changes § 489 and 495 to exclude RTUs or define "radiotelephone corporation" as a category of public utility separate from the wireline "telephone corporation." They recommend that this legislation specify that while RTUs have specific rights and obligations, they are not subject to other statutes applicable to monopoly wireline telephone corporations. The parties recommend that the following statutes be modified to add such clarifying language: § 728.3 (public telephones); § 871 et seq. (universal service); § 489 et seq. (tariff filing); and § 786 (mandatory mailings to residential subscribers). Mobilecomm asserts that adding clarifying language in each of these statutes would avoid unintended regulatory restraints on

radiotelephone corporations which lead to further expense, time and litigation to lobby for statutory amendments.

We will consider these recommended changes in statutes as we routinely review proposed legislation.

7. Status of RTUs

In this proceeding, DRA recommends that RTU status be reinvestigated based upon the same current division of services within the RTU industry, 10% two-way mobile and 90% paging. DRA suggests that under these "changed circumstances," it may be more appropriate to treat RTUs as end users. The implication of this recommendation is to charge RTUs additional end user fees, including access charges, for interconnection.

A majority of the commenters in this proceeding oppose DRA's recommendation to reinvestigate and possibly change RTUs' status to that of end users. Crico alleges that there is no record to warrant reinvestigation, that this recommendation defies common sense, and that it undermines an RTU's ability to obtain reasonable intercompany connection and traffic interchange agreements (intercompany agreements). Allied cites Decisions 62156, 71291, 74969, 88513, and 83-08-059 as conclusively deciding that RTUs are telephone corporations. Numerous RTUs contend if they are reclassified as end users, they will have no protection from high interconnect charges because they will lose their legal standing as a telephone corporation under § 766 to challenge these charges.¹⁷

Allcity contends that DRA's recommendation to change their status to end user could jeopardize the very existence of small and medium-sized RTUs. Allcity contends that LECs have historically attempted to unfairly disadvantage RTUs in negotiating interconnect terms, citing numerous complaint proceedings. Crico agrees and believes that many small and medium-sized companies would be at the mercy of LEC competitors if their classification is changed.

Allied requests that DRA's recommendations regarding RTU status be the subject of formal hearings before they are adopted.

In response to these allegations, Pacific strongly disagrees that interconnect issues are subject to this proceeding. In Pacific's opinion, to consider interconnect issues in this proceeding would be like discussing interLATA access in a proceeding regarding AT&T's regulation. Pacific does not believe an RTU rolemaking encompasses rules on an RTU's purchases from its LEC supplier. Pacific contends that RTUs do not provide the same basic exchange service as LECs, nor do they have the same franchise obligation to serve all customers in their territory. Therefore, Pacific believes RTUs are distinguishable from LECs for the purpose of negotiating interconnection. Pacific does not believe RTUs are entitled to the same interconnect terms as LECs. Pacific contends that LECs may negotiate intercompany agreements among themselves which are tailored to their specific needs and may request Commission intervention pursuant to § 766 and 767 if these negotiations break down.

Pacific contends that DRA's request that intercompany agreements be approved by the Commission prior to implementation is contrary to D.50837 (1954) 53 CPUC 662, which required intercompany agreements to be filed for informational purposes only. Pacific believes that § 766 is sufficient to resolve RTU/LEC contract disputes.

7.1 Discussion

[8] We are given no reasonable justification to reinvestigate the classification of RTUs. The allocation of paging and two-way mobile services within the RTU industry is irrelevant to the issue of classification. As discussed above, our conclusion that an RTU is a telephone corporation was not based upon this division of services but on the nature of RTU services. DRA has not addressed the nature of RTU services to support its recommendation to reinvestigate. Therefore, we will not change this classification. The question of whether an RTU should be charged end user fees or access charges is discussed below.

8. Interconnection

RTUs offer paging and two-way mobile telephone service using radio-operated systems connected to an LEC's wireline network. This interconnection is governed by an RTU/LEC agreement. The agreement specifies the LEC services and facilities to be used and the respective charges. Interconnection charges are the largest RTU expense and can range up to \$40,000 per month for a Type 1 connection.

There are two types of RTU connections, Type 1 and Type 2. The Type 1 connection connects the RTU switch or terminal to each desired end office in its service territory by a dedicated, leased telephone line. Separate trunks and a separate block of telephone numbers are purchased for this purpose. A call placed by an RTU's customer is routed to the closest end office, then transferred from end office to end office until it reaches the end office closest to its destination. There are charges to the RTU for each switching operation. This type of connection requires that as many as 30 or 40 end offices be linked in the typical metropolitan area. The larger the number of end offices to which the RTU is connected, the more likely it is that landline-originated calls to RTU paging units will be charged "Zone 1" (local) rates by the wireline (LEC) carrier. The originating caller pays these telephone charges. If the RTU has no connection to an end office needed to complete a call, the originating caller may incur toll charges for such a call. Charges for LEC facilities dedicated to an RTU for Type 1 connection are well established by LECs.

The Type 2 connection links the RTU switch to an LEC tandem, eliminating the need for leased lines to, and identifying numbers within, numerous end offices. The RTU switch itself becomes an end office. The Type 2 connection is a more efficient use of the wireline network and can be less costly to the RTU, its customers, and landline-originating callers.

In addition to providing connection facilities, the LEC assigns to the RTU a block of telephone numbers to be allocated to an RTU's customers. DRA recommends that unused telephone numbers be retrieved by LECs after a reasonable period of time in order to retain adequate telephone numbers for other LEC

customers.

8.1 Intercompany Agreements

In studying competition within the industry, DRA identifies a "bottleneck" in providing RTU access to the public network. Only LECs provide this access. DRA concludes that a monopoly of an essential interconnection within this competitive environment creates unequal market power. If the LECs abuse this monopoly power by not providing equal access, DRA contends that a party can be denied the ability to compete. Since LECs also own RTUs which compete in this market, such abuse has serious anti-competitive implications, according to DRA. To remedy the interconnection problems, DRA recommends that we adopt the FCC requirement of good faith negotiations for interconnections and that the LECs provide the requested type of interconnection within a reasonable time or within a maximum of six months. Other parties agree that interconnection is a serious problem affecting the ability to compete. They support the requirement of good faith negotiations and connection within a reasonable time.

Numerous parties in this proceeding complain that LECs deny the allegedly cheaper Type 2 connections to some RTUs even though they are made available to cellular carriers at greatly reduced rates. RTUs also complain that more favorable prices are provided to an LEC's affiliates. They allege that these below-cost prices are subsidized by other LEC monopoly operations.

REPCO and others indicate they use microwave facilities to carry traffic between mobile and paging terminals and wireline end offices when lease lines or identification numbers are unavailable or are unreasonably priced. REPCO contends that if it were not permitted to bypass, its interconnection costs would be prohibitive. REPCO complains that it is considered an end user by Citizens and for several years has been unable to negotiate reasonable rates with Pacific.

Citizens denies that it considers REPCO to be an interexchange carrier or that it billed REPCO interexchange carrier access charges.

Citizens contends that it provides REPCO with two measured business lines used to access the toll network at a monthly end user common line rate. No end user charges are applied to any other service. Citizens considers this charge appropriate.

Pacific states that the reason Type 2 connections have not been provided is because no agreeable price has been reached, implying that RTUs' price expectations are unrealistic. Pacific alleges that Type 2 connections are more costly than Type 1. Pacific recommends that the Commission reject RTU requests to price Type 2 connections below cost.

Pacific contends that direct inward dialing (DID) numbers are allocated on a first come, first served basis, with "plain old telephone service" (POTS) customers being given priority. Pacific contends that the FCC has approved this method of allocation. Therefore, in Pacific's opinion, it has responded favorably and without discrimination in the allocation of telephone numbers and interconnection. Pacific sees no need for nondiscriminatory requirements. However, Pacific also comments that the administration of intercompany agreements is becoming time-consuming. Other parties complain that negotiating these contracts is expensive.

8.2 Radio Carrier Access Tariff

DRA's overall recommendation in this proceeding is to deregulate the RTU industry. However, DRA also comments on Pacific's informal proposal for a Radio Carrier Access Tariff (RCAT). Pacific distributed this informal proposal for Commission staff review prior to filing it formally as an advice letter. The proposed RCAT would combine the prices for all facilities and services offered in any type of RTU interconnection into one tariff. Pacific proposes to use this tariff to price all RTU paging and two-way mobile services. Pacific proposes that rates be predictable the first two years, and in the third year Pacific would review and possibly revise the prices to reflect costs.¹⁸

DRA opposes the proposed RCAT for a number of reasons. It believes that without clarification of whether an RTU is an end-user, the proposed tariff is an access tariff which is

normally used for end-users. In addition, DRA opposes the proposition that RTU carriers may be charged prices different than those in existing tariffs. In DRA's opinion, if approved, this tariff would be insulated from review in an LEC general rate case.¹⁹ DRA also provides calculations to show that the rates in the proposed RCAT are 50% below cost.

American Paging (American) interprets DRA's comments on RCAT as recommending tariffed interconnection. American strongly supports such a recommendation. American believes having one tariff applicable to all RTUs would assure no price discrimination against any RTU. American recommends work-shops to draft this tariff, and it believes this forum will give small RTUs a way to participate in the development of charges without the cost of individual negotiations.

Allied proposed allowing the option of submitting the intercompany arrangements either as an intercompany agreement or as a tariff. Allied considers both to be consistent with an RTU's status, since both documents have been used in the past. In Allied's opinion, DRA's tariffing of all RTU interconnect terms is too rigid in a changing, competitive market. Allied suggests that the many issues in this proceeding, including RCAT, depend directly on a reaffirmation of existing law that RTUs are telephone corporations with the right to negotiate intercompany agreements.

Metromedia Paging Services Group (Metromedia) challenges DRA's assertion that RTU bargaining power is based upon special contracts which are below costs. Metromedia points out that DRA provided no cost analysis to show RCAT rates below cost. Metromedia alleges that DRA's presentation of a one-time fee of \$35,000 for a block of telephone numbers by Pacific and \$12,000 for each tandem by General were unsubstantiated and were three times larger than fees or charges of other BOCs. Metromedia asserts that the FCC did investigate RTU status and that this Commission has also done so. DRA replies that the FCC treats RTUs different than this Commission.

8.3 Discussion

RTU interconnection is formalized in an intercompany agreement. The agreement contains the terms and conditions of service, set rates for blocks of telephone numbers and installation and refers to tariffed rates for trunk lines and message units. These intercompany agreements are not required to be cost-justified and are filed for information purposes only. In this proceeding, RTUs complain that they are inappropriately assessed end-user charges and are unable to agree on the charge for the more efficient Type 2 interconnection. We take official notice that numerous intercompany agreements to provide Type 2 interconnection have been filed at the Commission since the comment period expired. Obviously, some agreement has been reached over this type of interconnection. However, we are concerned that the RTU is in a position of unequal bargaining power in negotiating interconnection agreements because the LEC is also an RTU competitor.

Interconnection is vital to the competitiveness of an RTU. Interconnection is obtained from only one source, the LEC. DRA describes these circumstances as a "bottleneck" in the monopoly provision of RTU interconnection. There is no doubt that the interconnection of RTU service with the public switched network is a monopoly service since only the LEC can provide it. In this sense, interconnection is a basic, essential service for an RTU which warrants strict regulation. In addition, there is no dispute that based upon a statewide average, Type 2 connections provide more efficient use of telephone facilities than Type 1. Under the circumstances where an LEC provides a monopoly service and may use the same service to engage in competition through an affiliate, we must assure equal bargaining power in interconnection negotiations. We must also assure that all types of RTU interconnection are available to all competing RTU carriers at reasonable, non-discriminatory and non-preferential rates.

[9] The majority of commenters in this proceeding, including DRA, are dissatisfied with the existing regulation of interconnection. DRA advocates continuing to authorize intercompany agreements with an additional

requirement of "good faith" negotiations. Adding this requirement does not address the unequal bargaining power of an RTU in negotiations with an LEC affiliated with a competing RTU. To compound the problem, RTUs complain of LEC price discrimination, preferential pricing and cross-subsidies from other LEC services. The recommended requirement of good faith negotiations does not reach these alleged problems. We do not intend to imply that LECs engage in these practices. We find unacceptable the possibility for such behavior to occur under the current regulation. In addition, RTUs and Pacific comment that interconnection negotiations are time-consuming and costly. Therefore, in order to assure equal bargaining power between RTUs and LECs, and assure the equal availability of all types of RTU/LEC interconnection at reasonable, non-discriminatory, non-preferential terms, conditions and rates, we will order all LECs offering RTU interconnection to tariff these interconnection arrangements. We will require these LECs to file proposed tariffs containing all terms, conditions and rates applicable to the provision of RTU interconnections, including Type 1 and Type 2 services discussed in this proceeding. The tariff filing should include rate elements for all services (tariffed and nontariffed) currently offered under RTU-LEC intercompany agreements. Any discrete service currently included in an RTU-LEC contract for interconnection should be included as part of an unbundled RTU-LEC tariff. Once the tariff is in place, or if an RTU should request any additional feature for interconnection, this request should be handled in the forthcoming ONA rulemaking proceeding. All services should be unbundled in the tariff, which should cover provisions for a Type 1 or a Type 2 interconnection. LECs should price all unbundled rate elements at direct embedded cost. The specific direct cost methodology will be included in the application. Numerous procedural options, such as written comments or workshops, may be used to give parties an opportunity to comment on the costs and methodology. All services should be unbundled so that the different needs of different RTUs can

be met. An RTU should not have to purchase, as a result of bundling, elements it does not require.

Each affected LEC shall propose an RTU interconnection tariff in an application to be filed within 150 days from the effective date of this order.

We take official notice that many intercompany agreements contain clauses where the RTU promises not to protest LEC tariffs filed which may relate to these agreements. We do not find these clauses applicable to the tariffs which we herein order. These clauses refer to tariffs which may be filed at the discretion of the LEC. The tariffs we herein order are mandatory and we value RTU comments on these proposed tariffs.

If the proposed tariffs are protested, the Commission or Assigned Administrative Law Judge will decide the appropriate course of the action. Should protesters dispute the applicability of the tariff to provide services, the appropriateness of end-user fees, access charges or methodology for calculating direct embedded costs, we will resolve these issues in the disposition of the application.

Once authorized, these interconnection tariffs are subject to all statutes and Commission General Orders governing tariffs. At the same time these tariffs become effective, all existing intercompany agreements will be superseded.

In resolving the dispute over terms, conditions and rates between RTUs and LECs, we cannot ignore that private radiotelephone carriers exist and are not subject to an order in this proceeding. We anticipate that private carriers will question whether the interconnection tariffs we order in this proceeding are applicable to them. The question of who the interconnection tariff should be applicable to is a complex issue for several reasons. First, a long term goal of Commission regulation is to move away from use-restrictive and user-restrictive tariffs given the distortions they can introduce into the market, as well as the practical reality of our limited enforcement power. However, if we do not limit who is able to make purchases under an RTU interconnection tariff, we create another opportunity for tariff arbitrage. Creating a new avenue for arbitrage causes us concern, especially

when historically, the Commission has supported lower prices for services provided only to a public utility with attendant obligations to serve, as opposed to a private carrier.

In reviewing the comments concerning the need for an interconnection tariff for private carrier paging (PCP) companies, the responses are mixed. Some would like the opportunity because they seem to think that the tariff will be priced on a cost-based standard. However, others are concerned that their option to negotiate a better contract rate might be taken away. We note that the Commission may always approve a contract even when a tariffed rate is available, according to GO 96-A, Section X.

Private carriers and LECs negotiate the terms, conditions and rates for this interconnection in the same manner as negotiations between LECs and RTUs. However, we have no record in this proceeding of the status of private carrier interconnection upon which to base a decision to require tariffs. Therefore, we will order all LECs to serve a copy of this decision and the application proposing an interconnection tariff on all private carriers currently receiving interconnection service. Should this issue be disputed, we will resolve it in the new application proceeding.

Cellular RTU interconnection is currently governed by D.90-06-025. If cellular RTUs seek comparable treatment for interconnection, such changes should be pursued through a petition for modification of D.90-06-025, or await review in the Commission's expected ONA rulemaking.

Finally, LECs who either have no interconnection agreements with RTUs or have only a few interconnections with RTUs have commented that they may have little or no need for a tariff. The order to file an interconnect tariff does not apply to LECs who do not interconnect RTU or PCPs. LECs with few RTU customers may file an advice letter with the Commission to concur with either GTEC's or Pacific's tariff, rather than develop their own, consistent with procedures used for 900 access tariffs.

9. Certification

Currently, we require a prospective RTU to obtain an FCC permit for its radio channels before submitting an application to the Commission for authority to operate facilities in the state. We added this requirement in 1983 because there was competition among applicants for an FCC license in most service areas. Because of this competition in licensing, all applicants filing simultaneous Commission applications may not obtain FCC licenses. To avoid the administrative burden of reviewing applications which may not obtain FCC approval or amending Commission applications changed during the FCC licensing process, we required that the FCC license be obtained first. (D.83-08-059.)

Parties in this proceeding identify the RTU certification requirements as regulation which is not cost-effective. Parties complain that it takes 5-6 months to obtain an FCC license and another 3-4 months for the Commission to approve certification. Therefore, they consider the total time to obtain authority to operate as an unreasonable period to wait before RTU construction may begin.

Airsignal of California, Inc. (Airsig) and Allied recommend that the Commission and FCC applications be filed simultaneously, as they were before 1983, to lessen the time for certifying new operations. Allied provides a standard application to shorten Commission review. Allied also recommends that the Commission delegate authority to the Commission Advisory and Compliance Division (ACAD) to approve uncontested applications. Airsigal recommends that this authority be delegated to the Executive Director.

Pacific recommends removing from the application the requirements of public need, technical feasibility, quality of service, financial responsibility, pricing and the submission of maps.

Willard Dodge, an ex-employee of the Commission representing himself, suggests that public need can be presumed if an FCC permit has been issued.

DRA recommends that the Commission aid open entry by granting interim authority to operate *ex parte* pending a hearing. At the same time, DRA reports that only one

application has been protested in the last two years.

One party, AAlert Paging Company of Sacramento, San Francisco, and San Diego (AAlert), requests that certification standards be more rigorous to eliminate under-financed and under-engineered paging operations. AAlert believes customers are harmed if these carriers sell out to other carriers or abandon service.

9J Discussion

[10] We agree that nearly one year is an unreasonable period to wait for certification. However, we have considered each of the recommended options to shorten this period and must reject most of them. The FCC assesses only the technical ability of the proposed service and does not assess the need for the service within the state. Therefore, we must retain the current Commission policy addressing public need. Because of our obligation to assure reliable RTU service at reasonable rates with no adverse effect on the environment, we must retain the current requirements in application proceedings.

In addition, we cannot delegate to staff statutory duties that require Commission exercise of discretion. The fact that an application is not protested is only one factor to be assessed in its review. The other factors of environmental impact, qualifications, technical feasibility and financial capability must be weighed by the Commission to determine if an applicant has made an adequate showing. Therefore, we cannot delegate to CACD or the Executive Director the duty of approving uncontested applications. In addition, we need territory maps to resolve RTU expansion disputes which continue to occur.

Even though the proposed options to shorten the certification procedure are inadequate, it is true that there are no longer numerous applicants competing for one FCC license. Therefore, the reason for requiring an FCC license prior to submitting a Commission application no longer exists. We will revise Rule 18(o)(1) to allow simultaneous filing of FCC and Commission applications. Before this proposed revision may be adopted, we must publish notice of the

revised rule in the Administrative Notice Register. After we publish the appropriate notice, we intend to adopt the proposed revision in a second interim opinion. (Appendix E.)

However, under the revised rule, before we grant authority to operate an RTU, three conditions must be met:

1. All amendments to an FCC application must be timely submitted to this Commission;
2. The license issued by the FCC must be for the same operations requested in the Commission application; and,
3. The FCC license must be filed with the Commission.

We will retain our current policy of making an exception to Item 3 above when the FCC is backlogged in mailing licenses but has published notice of the issuance of a license. After an applicant makes an adequate showing that these circumstances exist, we will grant certification upon the condition that the FCC license is filed at this Commission in a timely manner.

Since we have so few protests to applications, interim authority is rarely needed. In addition, our revisions to allow simultaneous filing of FCC and Commission applications will undoubtedly shorten the total approval period. However, should interim authority be desired pending a hearing, it can be requested under existing procedures either in the application or in a subsequent motion.

DRA's analysis of customer complaints does not verify that more strict regulation of RTUs existing the industry is warranted.

10. Expansion of Service Territory

[11] Currently, Rule 18(o)(5), "Construction or Extension," allows RTUs to expand their service territory without an application if the proposed expansion is "minor." An extension of service territory is considered "minor" if it does not overlap the radio service area of another utility by more than 10% of either utility's radio service area and does not provide substantial coverage of additional major communities.

CACD reviews proposed expansions to determine whether they are major or minor. If the proposal meets the requirements to be classified as "minor," CACD advises the applicant to file an advice letter. If the proposal cannot be classified as minor, CACD advises the applicant to file an application for expansion pursuant to § 1001 and Rule 18(o)(5).

In this proceeding, the majority of the industry representatives request relaxation of our expansion requirements. They consider these rules time-consuming, costly and a hindrance in a competitive environment. Several parties request that statewide authority be automatically granted at the time of certification.

We do not believe that certification to operate in one area sufficiently justifies certification to operate in another major or non-contiguous area. Certainly, such an operator may use existing operations as evidence of adequate expertise and qualifications to operate other facilities. However, adequate financing for expanded operations is the minimum protection we can provide potential customers to assure that the expanded operations are reliable and will provide adequate service at reasonable rates. These criteria are central to our statutory duties and are important regardless of the phase of growth or development of a regulated industry. We are also under an obligation to assure that expanded facilities do not negatively impact the environment. Relaxation of these requirements in the manner parties suggest would prevent us from meeting our statutory obligations. Therefore, we will retain the present requirements for expansion of operations.

11. RTU Tariffs

[12] RTUs are not subject to cost-of-service regulation. We allow the price of RTU services to be set by competition. However, RTUs must file tariffs and rate schedules with the Commission. In addition, GO 96-A requires that rate decreases may not be implemented until 40 days after the new rate is filed. For RTUs we have reduced this period to 30 days so that customers, competitors and CACD may review the proposed rate and protesters may file

opposing comments, if desired. However, we have retained for RTUs the requirement that rate increases be filed.

11.1 Rate Decreases

Carriers in this proceeding complain that the 30-day period for rate decreases is unreasonable in a price-competitive industry. We agree. DRA's study of the RTU industry shows that RTU rates decreased 30-40% from 1984 to 1987. This study also shows that the major method of competing is by pricing RTU services. Under such circumstances, carriers desire to react more quickly to a change in a competitors' price. Carriers request that the notice period for rate decreases be shortened to 15 days for paging services or 5 days for all RTU services. Several parties request that no tariffs be required if rates fall within a pre-authorized rate band.

We believe the price competition upon which the RTU industry is based justifies the greatest rate setting flexibility possible under regulation. However, the parties requesting pre-authorized rate bands do not offer a rate band proposal for our consideration. Therefore, we will authorize rate reduction flexibility for RTUs similar to that of cellular Radiotelephone recently authorized. (Regulation of Cellular Radiotelephone Utilities (1990) 36 CPUC 2d 464, 492.) RTUs may file rate reductions effective on one day's notice. These reductions will be considered temporary tariffs effective on one day's notice. Absent a protest within the 20-day period, the temporary status of the tariff will automatically become permanent. If a protest is filed, the tariff will remain a temporary tariff until the protest is either withdrawn or resolved by the Commission. RTUs will not be limited in the percentage of rate reduction they request. In addition, a rate decrease means that all rate elements are reduced. It does not include a net decrease where some elements are increased and others decreased. This procedure is not available for other tariff amendments. We authorize the temporary tariff as an exception to the requirements of GO 96-A, pursuant to Section XV, and direct the Executive Director to include the applicable changes to GO 96-A.

11.2 Rate Increases

Currently, we require 30 days' notice and Commission authorization of RTU rate increases in order for customers to receive notice, comment, or seek alternative providers. The RTU industry is one where customers frequently change carriers. This process is called "churn." Although price increases are rare, it is reasonable to presume customers will seek alternate providers if their carrier increases its prices. Again, we seek increased flexibility for RTUs. We view our regulation of the Nondominant Interchange Carriers (NDICs) as analogous here. We will adopt similar rules. In D.91-12-013, we adopted a bifurcation of increases into major and minor ones. This bifurcation was derived from the decision in AT&T Communications of California's (AT&T-C) "READY-LINE" proceeding (D.90-11-029 in Application 83-03-046). In D.90-11-029 the Commission defined minor rate increases as follows:

"The term 'minor increases' is understood to mean an increase in rates which does not increase AT&T-C's California intrastate revenues by more than one percent (1%) and which will not increase rates for the affected service by more than five percent (5%)." (AT&T Comm. of Calif. (1990) 38 CPUC 2d 126, 146.)

As long as a rate increase filing is less than both 1% of total California intrastate revenue and 5% of the affected service's rates, it will be considered a minor rate increase. If a filing on any service exceeds either parameter above, it will be treated as a major increase.

When the RTU files a minor rate increase, it would be effective in 5 working days. If the filing is major rate increase, then the present 30-day notice requirement will continue to apply. This will allow the RTUs to respond quickly to minor cost increases and to save the cost of notices for them, while protecting customers from unnoticed major rate increases. The agreement also allows the CACD and DRA staffs time to review the more substantial rate increases if they should occur.

The term "service" as in "affected service"

discussed above should be the equivalent of separately [individually] tariffed services that are offered to customers by the RTUs. The bifurcation has merit, and a five-day notice requirement for minor rate increases is reasonable. Accordingly, we will modify GO 96-A to permit minor rate increases to become effective on five working days' notice. These reductions will be considered temporary tariffs effective on five days' notice. Absent a protest within the 20-day period, the temporary status of the tariff will automatically become permanent. If a protest is filed, the tariff will remain a temporary tariff until the protest is either withdrawn or resolved by the Commission. All rate increases exceeding the criteria of a minor increase will continue to require a 30-day notice period. We direct the Executive Director to include the changes to GO 96-A in its next revision and printing.

11.3 Tariff Amendments

Radio Relay and Electropage request that we eliminate the tariff requirement that updated transmitter locations be filed immediately, allowing the carrier to include them in its next tariff filing. However, amended transmitter locations may have a negative environmental impact. It is important that we receive the updated transmitter location as soon as possible to determine if the environmental impact has changed. Therefore, we will retain this requirement.

11.4 Customer Deposit Clause

[13] In comparing RTU tariffs with those of other telephone corporations, we find no language requiring an RTU to return customer deposits when it discontinues operations. Discontinuing operations includes exiting the industry and transferring operating rights to a third party. Protection of customer deposits is important in an industry with a high "churn" rate. Because such a policy is reasonable and required of telephone corporations, we will require that RTU carriers amend tariffs to include the same policy on customer deposits.

12. Agents

In this proceeding, we asked commenters whether additional regulation is required to govern agents in the RTU industry. Cellular Resellers Association, Inc. (CRA) responded in detail. CRA distinguishes a paging agent from a cellular agent or reseller. CRA asserts that cellular resellers are certificated by the Commission. Therefore, they have their own tariffs and are the only competing non-facilities based entities. Paging agents, on the other hand, operate for numerous facilities-based carriers using the tariffs of the overlying carrier. Therefore, paging agents do not set retail rates, as do cellular resellers. CRA recommends that the Commission should assure that paging agents abide by the terms and conditions of their contractual agreements and use the proper tariff rates, those of the overlying carrier.

Pacific asserts that RTU agents conduct sales, administrative functions, and customer functions under individual contracts as the carrier's representative and are therefore governed by the same regulations as the carrier. However, cellular resellers offer service under terms and conditions independent of those established by its facilities-based provider; therefore, specific regulation of both the cellular reseller and the facilities-based provider is needed, in Pacific's opinion.

Radio Relay, Electropage, Pacific, and American saw no need for additional regulation of RTU agents. Metromedia and Dodge believe problems between an RTU and its agent are caused by inadequate contract language. DRA adds that "tighter" contracts between these parties will prevent most problems and the terms and conditions are best left to the contracting parties. Numerous parties recommend that these disputes continue to be resolved by civil courts.

Allied gives an example of a recurring problem between agent and carrier which it believes regulation should resolve. When an agent defaults on paying its bill, the agency contract states that he or she must return the customer list to the carrier. Agents often do not comply with this contract requirement and carriers hesitate to terminate the service of customers who have already paid their bill to the agent.

Allied comments that these cases take an unreasonable amount of time to conclude in civil court and often do not result in appropriate relief. Allied requests that these disputes be resolved under the Commission complaint procedure as a billing dispute or non-payment of a bill and that carriers be authorized to notify customers that their service is in jeopardy.

12.1 Discussion

[14] The decision to engage an agent is one made by an RTU. Generally, under such circumstances, the rights and responsibilities of the parties are governed by an executed agreement. Parties responding to RTU/agent problems point out that many disputes can be avoided by more plenary executed agreements and that these disputes should remain under the jurisdiction of civil courts. We agree. However, we will also formalize our opinion that the agent steps into the shoes of the RTU and require RTUs entering into agency agreements to include a clause explaining this responsibility and requiring that agents observe all Commission regulations governing the RTU. We also will require that the RTU maintain the right to directly contact customers to notify them of bill disputes and the potential consequences. The customers, even under the operation of an agency agreement, are the customers of the overlying carrier.

13. Predatory Pricing

Allcity Paging (Allcity) recommends that the Commission play a more active role in policing unauthorized rates. Allcity alleges that many RTUs assess unauthorized rates, such as discount rates, well below their tariff rates. In Allcity's opinion this unsupervised practice poses a serious threat to the long-term health of the industry and to the ratepayer. Allcity believes that the purpose of discounting rates is to force a carrier out of the market, giving well-financed carriers domination of the industry and the opportunity to raise prices. Allcity cites the airline industry to illustrate this occurrence, and it requests enforcement of existing tariff rates and an increased vigilance of predatory pricing

by the Commission.

Several other parties make allegations of anti-competitive pricing and behavior by LECs who provide RTU service. We direct parties alleging anti-competitive behavior or use of unauthorized rates to continue to participate in formal complaint proceedings and Commission-initiated RTU investigations, as they have in the past. We do not conclude that any additional procedures are needed.

14. Cross-subsidies

[15] Pacific and GTEC contend that existing structural and accounting safeguards for LECs prevent a cross-subsidy of RTU and other monopoly services. However, Pacific suggests that it needs improved accounting procedures for shared wireline and RTU facilities.

Willard Dodge suggests that Pacific's RTU subsidiary be moved to Pacific Telesis. He states that Contel has made adequate provisions for cross-subsidies and that Citizens already has a separate subsidiary for RTU service.

DRA contends that in dual operations, an LEC may share expenses with an affiliated RTU. DRA finds that, in addition to general administration and overhead, repair and maintenance expenses are shared. In its study of cross-subsidies, DRA did not have enough information to determine whether there was cross-subsidization between an LEC and an affiliated RTU. Nor could DRA determine whether an LEC and an affiliated RTU operation are physically separable. DRA recommends that wireline companies establish accounting procedures to separate an affiliated RTU and develop a uniform accounting system that produces a fully distributed profit and loss statement with separate accountability of assets. DRA recommends that wireline companies report this information monthly to the Commission. DRA recommends that RTU services for wireline companies remain "above the line" or included within the regulated revenue requirement until the Commission investigates the issue of physically separating an LEC and its RTU affiliate.

DRA's recommendation to separate RTU and LEC operations for accounting purposes is

reasonable in a competitive environment where LECs have affiliates which compete for radiotelephone customers. This policy becomes increasingly important as we allow more flexible pricing and reduced regulation in the competitive RTU industry. We will adopt DRA's accounting recommendation and address in the future the issue of physical separation of LEC and RTU operations.

15. Consolidation

In general, large RTUs do not consider consolidation a threat, while the smaller RTUs are concerned that Regional BOCs will consolidate further, making it impossible for smaller firms to compete.

Pacific asserts that consolidation is a healthy transformation of a highly fragmented, inefficient and unsophisticated industry into a more customer-focused, efficient, and highly competitive industry capable of serving all needs for mobility. In Pacific's opinion, consolidation provides the momentum to expand the market and deregulation would not affect consolidation.

GTEC believes that consolidation presents some potential entry problems. It notes that small carriers have banded together to enforce regulation and enhance their negotiating power with LECs. However, as the industry becomes more competitive, GTEC believes that larger RTUs using Type 2A interconnection will make entry and competition more difficult for small carriers due to the cost-effectiveness of larger networks. GTEC contends that regulation may equalize this effect.

AAIert believes that consolidation within the paging industry will continue. However, AAIert believes there will always be at least five competitors in each market since subsidiaries of BOCs are not likely to be further consolidated.

Mr. Dodge does not consider consolidation to be a potential problem, since most of attractive acquisitions have already been made, in his opinion.

DRA performed two separate analyses of market concentration, the Herfindahl index and the concentration ratio.²⁰ Based upon these measurements, DRA finds no adverse effects of

consolidation. Therefore, DRA reports no adverse effect on the RTU industry due to consolidation.

DRA's review of RTU industry concentration was performed four years ago. The industry has continued to grow and evolve since then. Therefore, another review of market concentration is reasonable to assure that DRA's conclusions are still valid. Accordingly, we will order DRA to report on the recent impact of consolidation, if any.

16. Customer Complaints

[16] Pacific Bell, AAIert and DRA recommend discontinuing regulatory oversight of customer complaints because they are few. Pacific believes that competitive forces are better than regulation in mandating solutions to complaints of limited coverage area, poor coverage, and poor service. DRA recommends that customers file complaints in civil courts and other consumer agencies but that CACD continue to oversee intercarrier disputes under § 766.

Allicity, Allied, Dodge, Mobilecomm, and Radio Call Corporation (Radio Call) believe Commission oversight of complaints should be maintained.

We desire to maintain a mechanism at this Commission for customers to complain about RTU operations and for carriers to resolve disputes, especially during this period of intense competition, expansion and growth. Customer complaints are a means of monitoring service quality, and to some degree, the adequacy of Commission regulation. Customer complaints involving technical requests, such as requests for more extensive service areas or better reception within the existing service area, are best resolved by the Commission rather than a civil court inexperienced in RTU technology.

17. CEQA Compliance

The overwhelming majority of commenters recommend that the Commission retain its role as the lead agency for RTU compliance with CEQA requirements. DRA is the only party who recommends that this role be transferred to local agencies. However, DRA's

recommendation is tied to its overall position that the RTU industry should be deregulated.

Several commenters recount problems, confusion, delay and excessive cost in obtaining environmental review from local agencies. We are persuaded that the Commission application proceeding creates less confusion, cost and delay, especially since we herein authorize simultaneous Commission and FCC applications. Accordingly, we agree that this Commission should retain its lead role in CEQA compliance for RTUs.

Several commenters request a categorical exemption from the current Rule 17.1 *et seq.*, our rules governing environmental review, for construction on existing towers or antenna farms. These commenters believe that such construction rarely results in a significant environmental impact. They request that more elaborate compliance be required in the latter case only.

A categorical exemption from CEQA compliance is solely within the discretion of the Secretary of the Resources Agency. (Pub. Res. Code § 21084(a).) A public agency, such as the Commission, may request an exemption for a specific category of projects. (Pub. Res. Code § 21086.) However, currently the Secretary of the Resources Agency has granted exemptions only for repair and replacement projects and for modern extensions of existing utility facilities. (Rule 17.1(h).) Thus, the current Resources Agency policy is clearly not to exempt new projects. Nor are we able to clearly define the new RTU construction on existing structures with no adverse environmental impact from the rare new RTU construction on existing structures which may significantly affect the environment and require environmental review. Therefore, we cannot propose that all new RTU facilities placed on existing structures be categorically exempted from CEQA review.

Findings of Fact

1. DRA recommends the same goals for RTUs as other telephone corporations: universal service, economic efficiency of pricing and production, encouragement of technological advancement, financial and rate stability, full

utilization of the local exchange network, avoidance of cross-subsidies or anticompetitive behavior, and inexpensive and efficient regulation.

2. Other parties recommend goals of: equal regulation of wireline and non-wireline RTU providers, facilitating the best use for the limited radio frequency spectra, and equitable terms for the interconnection of an RTU to the LEC.

3. Parties dispute whether the goal of universal service is applicable to RTU service, specifically two-way mobile services, in rural areas. Some parties consider such service discretionary, while others consider it basic exchange service in areas where the terrain prevents traditional wireline telephone installation.

4. Parties do not provide the number of rural customers who rely solely on two-way mobile service in each service territory.

5. In 1988 the FCC allocated additional radio channels to be used in rural areas under a program called BETRS.

6. In 1988 the FCC granted licenses for cellular service in California's 12 RSAs. Presently, all 12 RSAs have at least one facility-based carrier providing cellular telephone service.

7. New radiotelephone service options may currently exist in rural areas which are not addressed in this proceeding. These new service options may impact the question of whether RTU service is essential or discretionary and the type of regulation appropriate for RTUs in rural areas.

8. The Commission does not require cellular operations to meet the goal of universal service.

9. The Commission needs further information about customers and the progress of new radiotelephone options in rural areas to determine whether two-way mobile service in rural areas is essential or discretionary and the type of regulation which may be appropriate.

10. It is reasonable to require each RTU to report the number of rural customers in its service area who rely solely on two-way mobile service for telecommunication and to allow parties to provide comments on this issue in further proceedings under this docket.

11. We find reasonable the goals recommended by DRA, except universal service, because they are normal goals for telephone corporations.

12. We find reasonable the goal of equal regulation of wireline and non-wireline providers and facilitating the best use for frequency spectra but parties do not make specific recommendations to achieve these goals.

13. We find reasonable the goal of equitable terms for interconnection of an RTU to the LEC because interconnection is required to offer RTU service.

14. DRA studied these factors in the competitive environment for the period 1984-1987: number of carriers, independence of carriers, revenues, number of customers, number of competing carriers within same areas, basis of competition, price of services, quality of service, and market shares of carriers.

15. With the exception of the number of competing carriers within the same areas, the facts presented in DRA's study are not disputed by other parties in the proceeding.

16. The RTU industry has grown from 40 to 91 certificated carriers from 1984 to 1987. Currently, there are 97 certificated RTUs.

17. During 1984-1987 the number of paging customers increased 73%, paging units increased 80%, and total paging revenues rose 33%. At the same time, two-way mobile service declined 4% and now represents 10% of total RTU services. Paging services represent 90%.

18. Forty RTUs are operated by companies holding more than one certificate and 33 were independently owned during 1984-1987.

19. During 1984-1987 the largest RTUs were two LECs and three BOC affiliates. There were seven medium-sized firms and over 50 small firms. Twenty-four firms were inactive.

20. During 1984-1987 the largest RTU firms earned 65% of total paging revenues, the medium-sized firms 2-8%, and the small firms 33-39%. Small firms also earned 40% of two-way mobile service revenues.

21. During 1984-1987 there was one county in California with no RTU service and four counties with only one RTU. However, in the remaining counties two to five independent firms competed.

22. Price is the prime means of competing. As a result, RTU rates have been reduced 30-40% from 1984-1987.

23. Quality of service is the second method of competition. In order to assess the quality of service, DRA reviewed the number of customer complaints. During 1985-1987 customer service complaints decreased from 13 to 2 and customer billing complaints decreased from 49 to 12. Technical advances in radiotelephone transmission and reception have improved service. Therefore, DRA reports that RTU service quality is good in urban areas.

24. Using the Herfindahl index and concentration ratio, DRA finds very low levels of concentrated market power. In these methods of market measurement, DRA counts affiliated firms as one company. The resulting concentration levels are comparable to those of the soap and food industries.

25. DRA's market study does not evaluate sub-markets within the state or the impact of statewide certification on market concentration.

26. PacTel presents the results of applying the H-index and concentration ratios to the metropolitan RTU markets in San Francisco, San Diego, Fresno and Los Angeles. These results also show low levels of market concentration.

27. It is reasonable to conclude that the RTU industry is highly competitive and that consolidation had not adversely affected the industry during the period 1984 to 1987.

28. The record in this proceeding indicates that the RTU industry continues to grow and consolidate. In addition, numerous statewide networks have been certified since 1987. Therefore, it is reasonable to update DRA's market study to verify that the conclusions in its 1984-87 market study are still valid. The updated market concentration study will be more complete if it includes an evaluation of known sub-markets, such as metropolitan areas, and considers the impact, if any, of certified statewide RTU operations since 1987.

29. The order instituting rulemaking indicates a plenary review of all RTU regulation is intended in this proceeding and specifically requests comments on the "bottleneck" monopoly issue. All RTUs and LECs received notice of this rulemaking and were given an

opportunity to comment on this issue. This issue is identified by commenters as one of the major problems in the industry. Therefore, it is appropriate to resolve this issue in this proceeding.

30. RTUs offer paging and two-way mobile telephone service using radio-operated systems interconnected to an LEC wireline network. LECs provide Type 1 or Type 2 interconnection facilities for RTUs.

31. On a statewide average basis, Type 2 interconnection is a more efficient use of the public switched telephone network because it eliminates the need for connection to numerous end offices and the designation of a block of telephone numbers to accompany each end office.

32. Interconnection with the public switched telephone network is vital to the RTU's existence. The terms, conditions, and rates of interconnection are vital to the competitiveness of an RTU.

33. Interconnection is a "bottleneck" monopoly because it is provided solely by an LEC, which may also be affiliated with an RTU competitor. Because of this dual role of an LEC, an RTU is placed in an inherently unequal bargaining position in negotiating interconnection arrangements with such an LEC.

34. There is inconclusive evidence to determine if, in fact, anti-competitive behavior or discriminatory, preferential and unreasonable interconnect rates exist in the RTU industry partly because intercompany agreements are not required to be cost-justified. In addition, the pricing of interconnection services and facilities may vary among the LECs and among the RTUs interconnected with the same LEC.

35. Because of the monopoly provision of service by an LEC, DRA recommends that parties be required to negotiate interconnection agreements in "good faith" and that an LEC be required to provide interconnection within 6 months. Numerous other parties agree with this recommendation.

36. Existing Commission regulation of interconnection gives an LEC the discretion to make available specific types of RTU interconnection within a time period and at rates, terms, and conditions determined by the LEC.

37. A "good faith" bargaining requirement will not change the inherent competitive disadvantage of an RTU negotiating interconnection with an LEC who may be affiliated with a competing RTU.

38. Requiring all terms, conditions and rates for interconnection to be placed in a tariff will minimize the RTU interconnection bargaining disadvantage and the possibility of anti-competitive, discriminatory or preferential behavior by an LEC affiliated with an RTU.

39. Negotiating individual interconnection agreements is time-consuming and costly. Establishing separate tariffs with all terms, conditions and rates for RTU interconnection will minimize the time and cost of negotiating individual RTU intercompany agreements.

40. It is reasonable that all terms tariffed or non-tariffed currently under contract in an interconnection agreement between an RTU and LEC will be part of the LEC's filed RTU interconnection tariff.

41. Requiring all interconnection terms currently under contract between an RTU and an LEC to be offered on an unbundled basis in the tariff assures that an RTU does not have to purchase, as a result of bundling, elements they do not require.

42. The interconnection tariff is a feature of a local exchange company's monopoly portion of the franchise and therefore is a Category I service for those companies under the new regulatory framework regulation established in D.89-10-031.

43. A tariffed price for interconnection based on direct embedded cost is consistent with the Commission's move toward cost-based rates for California utilities and is a reasonable basis for pricing the service.

44. It is reasonable and expeditious to schedule time for parties to review the LEC's filed costs and cost methodology once the application is filed with the Commission either via a workshop or via written filed comments.

45. It is reasonable to expect that any request made for a new service feature associated with interconnection after a tariff is in place will be examined as part of the Commission's forthcoming Open Network Architecture rulemaking.

46. LECs are the sole providers of interconnection to the public switched network for uncertified private radio carriers who have no notice of this proceeding. It is reasonable to inquire whether the proposed RTU interconnection tariffs herein ordered are applicable to private radio carriers. It is reasonable to allow private radio carriers and parties in this proceeding to comment on this issue in further proceedings under this docket.

47. Cellular companies interested in using this tariff may file a petition to modify D.90-06-025 which established the tariffs which govern cellular service, or may await modification to interconnection tariffs which may result from the Commission's forthcoming open network architecture rulemaking.

48. Small local exchange companies may have little or no need for interconnection tariffs, and it is reasonable to permit such companies to concur with GTEC's or Pacific's filed tariffs consistent with procedures adopted for 900 access tariffs.

49. We require RTUs to obtain an FCC license prior to submitting an application for certification at this Commission. We established this requirement to avoid certain administrative burdens when FCC applicants were required to compete for a license. However, these circumstances no longer exist.

50. The time required to complete separate FCC and Commission certification is unreasonably lengthy.

51. Since the FCC no longer requires an RTU to compete for a license, it is reasonable to allow potential RTUs to simultaneously submit applications to the FCC and this Commission.

52. Current regulation allows an RTU to apply for statewide certification provided it has statewide FCC licenses. Parties request automatic statewide certification based upon existing successful operations in one or more service territories. However, certification to operate in one or more areas does not address whether adequate financing or absence of environmental impact exists to operate in another major or non-contiguous area or to operate statewide. The statutory requirements of adequate, reliable service mandate that existing regulation of expansion remain.

53. Because price competition has resulted in significant decreases in RTU rates from 1984-87 and price is the primary method of competing, it is reasonable to allow RTUs the greatest regulatory flexibility in reducing rates to meet the price of a competitor. Therefore, relaxing the notice period for rate reductions to one day is reasonable.

54. RTU customers often respond to rate increases by changing carriers.

55. It is reasonable to bifurcate RTU rate increases into major and minor ones.

56. The term "minor increases" is understood to mean an increase in rates which does not increase intrastate revenues by more than one percent and which will not increase rates for the affected RTU service by more than five percent.

57. It is reasonable to allow RTUs to file advice letters proposing minor increases to be effective in five working days.

58. It is reasonable to continue the 30-day notice requirement for major rate increases.

59. RTU tariffs do not contain a clause regarding the disposition of a customer's deposit if an RTU exits the industry or transfers its operation to another carrier. This clause is standard for other telephone corporations and is reasonable to require in RTU tariffs.

60. RTU agents operate under the same terms, conditions and rates as the overlying RTU.

61. RTU agents must assume all regulatory duties of the overlying RTU. It is reasonable to require RTUs entering into agency agreements to include a clause attesting to this assumption of duties. In spite of any agency agreement, it is reasonable for an overlying carrier to retain the right to notify its customers of a bill dispute by the agent and the possible consequences of disconnection should the bill remain unpaid.

62. The solution to many disputes between an RTU and its agent is to draft more specific contracts.

63. Current procedures of formal complaints and special carrier investigations for tariff violations are adequate to address allegations of anti-competitive behavior.

64. Pacific agrees that accounting procedures for shared wireline and RTU facilities are

available and have been adopted. Other LECs have adopted similar accounting practices.

65. DRA is unable to ascertain if LECs cross-subsidize their RTU operations.

66. DRA's recommendation that LECs establish accounting procedures to separate an affiliated RTU and develop a uniform accounting system that produces a fully distributed profit and loss statement with accountability of assets is reasonable.

67. Further investigation of the physical separation of an LEC and its RTU affiliate is needed. It is reasonable for RTU services of LECs to remain within the regulated revenue requirement until this issue is resolved.

68. Customer complaints regarding technical issues, such as service area coverage, are best resolved by this Commission rather than a civil court. Customer complaints may be used to gauge the quality of service and reasonableness of rates within the RTU industry.

Conclusions of Law

1. The change in the division of RTU services to 90% paging and 10% two-way mobile telephone is not sufficient to warrant a conclusion that there is no longer a public interest to justify regulating RTUs and does not justify reinvestigating the status of the RTU.

2. The dispute over interconnection terms, conditions and rates justifies continuing regulation of RTUs.

3. PU Code § 489 and 495 mandate that RTUs file tariffs and rate schedules for services provided.

4. Tariffs containing all terms, conditions and rates for RTU interconnection should be filed by each LEC.

5. Tariff prices should be based on direct embedded costs.

6. Parties should comment on the LEC's proposed costs and cost methodology either through written comments or in a workshop.

7. Parties requesting additional interconnection features after the filed tariff is approved by the Commission should make their requests as part of the forthcoming ONA rulemaking.

8. LEC tariffs should be unbundled so that RTUs do not have to purchase, as a result of

bundling, elements that they do not require.

9. All terms tariffed and nontariffed currently part of an LEC's contract for RTU interconnection should be included in the filed tariff, which should cover provisions for Type 1 and Type 2 interconnection.

10. The interconnect tariff should be a Category I service for LECs under the NRF.

11. Clauses contained in intercompany agreements prohibiting an RTU from protesting tariffs referenced in the agreement are not applicable to the order in this proceeding requiring proposed tariffs to be filed.

12. LECs should be ordered to provide a copy of this interim order to private radio carriers currently interconnected with the LEC network.

13. This proceeding should be held open to receive comments on the issues of basic service in rural areas, separate accounting for RTUs affiliated with LECs and current market concentration.

14. The proposed Rule 18(o)(1) should be forwarded to the OAL pursuant to applicable Government Code Sections and should be adopted after those procedures are followed.

15. Current requirements in PU Code § 1801 and Rule 18 for expansion of RTU facilities or operation should be retained.

16. RTUs should be authorized to file small rate reductions on one day's notice and minor increases on 5 working days' notice. This authorization should be reflected in the next revision and printing of GO 96-A.

17. The 30-day notice period for major rate increases and immediate filing of updated transmitter locations should be retained.

18. RTU tariffs, unlike other telephone corporations, do not contain a clause addressing the disposition of customer deposits when an RTU discontinues operations. A customer deposit rule is standard in the tariffs of telephone corporations.

19. Civil courts may award relief in agency disputes that are not available to be awarded by this Commission.

20. RTU agency agreements should contain a clause specifying that an agent assumes the obligation of the overlying carrier to comply with all Commission regulations and the tariff

filings of the overlying RTU. The agency contract should contain a clause authorizing the overlying carrier to directly contact customers under circumstances of a bill dispute by the agent.

21. The Commission should remain the lead agency for determining RTU compliance with the California Environmental Quality Act.

22. LECs should be required to propose accounting procedures to form a separate subsidiary for RTU facilities and expenses. Separate subsidiaries should be included within the regulated revenue requirement until the issue of physically separating an RTU affiliated with an LEC is resolved by the Commission.

23. Customers should continue to be authorized to file at the Commission informal and formal complaints against an RTU.

24. This order should be effective today to implement these changes to the Radiotelephone Utility industry.

INTERIM ORDER

IT IS ORDERED that:

1. The General Order (GO) 96-A requirement for 30 days' notice of radiotelephone utilities (RTU) rate decreases is reduced to 1 day for rate reductions with the filing of an appropriate advice letter. The requirement for minor increase is reduced to 5 days. The advice letter shall indicate an approved form of customer notice. No other tariff amendments are authorized to be filed in rate reduction or minor increase advice letters.

2. Notice of the proposed revision to Rule 18(o)(1), as set forth in Appendix E to this decision, shall be transmitted to the Office of Administrative Law for publication in the Administrative Notice Register. Any interested party may file further comments on this proposed revision with the Commission Docket Office within 60 days after the effective date of this order. Comments shall be served on the other parties to this proceeding.

3. Within 45 days after the effective date of this order, each RTU shall amend its existing service tariff to include two policies:

a. returning customer deposits when the

RTU discontinues operation; and

b. requiring an agent to abide by all governing Commission regulation and the RTU's service tariff and retaining the right to directly communicate with all customers.

4. Within 90 days after the effective date of this order, each RTU and LEC offering two-way mobile service shall submit to DRA:

a. The total number (or reliable estimate of the total number) of rural and marine customers within the service territory;

b. The number of customers who use two-way mobile service instead of universal service;

c. The options available to rural customers for obtaining services similar in quality and price to two-way mobile service.

Comments on the issues of current service options in rural areas, whether two-way mobile service is essential or discretionary, and the appropriate regulation in rural areas shall be filed as described in Ordering Paragraphs 8 and 9 below.

5. Within 120 days after the effective date of this order, each LEC shall mail to all parties proposed accounting procedures to separate an affiliated RTU and develop a uniform accounting system that produces a fully distributed profit and loss statement with separate accountability of assets. LECs shall comment on the issue of physical separation of the LEC and its RTU operations. Comments shall be filed as described in Ordering Paragraphs 8 and 9 below. RTU services offered by LECs shall be included within the regulated revenue requirement until the issue of physical separation is resolved by the Commission.

6. Within 180 days after the effective date of this order, DRA shall file and serve each party in this proceeding an updated market concentration study as discussed in this decision. Comments on the updated study shall be filed as described in Ordering Paragraphs 8 and 9 below.

7. Comments on the issues discussed in Ordering Paragraphs 4, 5, and 6 above shall be filed in the Commission Docket Office located

in San Francisco or Los Angeles within 20 days after the market study discussed in Ordering Paragraph 6 is mailed.

8. Comments required in this order must contain a certificate of service to parties listed in Appendix D attached to this order and be filed in compliance with Rule 4.5 of the Commission's Rules of Practice and Procedure.

9. Within 150 days after the effective date of this order, each LEC offering RTU interconnection services shall file an advice letter proposing a tariff for RTU interconnection services, facilities, terms, conditions and rates. These tariffs shall include all terms tariffed and nontariffed currently under contract between an RTU and the LEC for interconnection. The tariff rate elements shall be unbundled, tariff rates shall be based on direct embedded cost, and tariffs filed by local exchange companies which are governed by the new regulatory framework shall be Category I services. The proposed tariffs shall be applicable to regulated RTUs and shall be used by RTUs only to provide RTU service. Each LEC providing RTU services shall mail a copy of this decision and a copy of the application proposing an RTU interconnection tariff to each uncertified private radio carrier currently interconnected with the LEC and any known interested parties. The certificate of service for the interconnection application must verify that these parties have been served a copy of this decision and the application. Private radio carriers desiring to participate in the application proceeding involving the proposed RTU tariff shall do so as proscribed by applicable Rules of Practice and Procedure. Protests to the proposed tariffs will be accepted in the interconnection application proceeding.

10. The Executive Director, in coordination with the Administrative Law Judge Division, should transmit a copy of this order to the Office of Administrative Law in accordance with the applicable provisions of the Government Code. Thereafter, we intend to adopt the revised Rule 18(0)(1) in Appendix E.

11. The Executive Director is directed to include the applicable changes to GO 96-A from the narrative, findings in fact, and conclusions of law of this order as applicable to the RTU industry in the next revision and printing

of GO 96-A.

This order is effective today.

Dated January 10, 1992, at San Francisco, California.

DANIEL Wm. FESSLER

President

JOHN B. OHANIAN

PATRICIA M. ECKERT

NORMAN D. SHUMWAY

Commissioners

APPENDIX A

ORDER INSTITUTING RULEMAKING

Purpose of Investigation

The Commission has an interest in the status of the radiotelephone industry and the appropriateness of our present regulatory scheme. This rulemaking focuses on paging and conventional two-way radio services.

History of CPUC Regulation of Radiotelephone Utilities

The California Public Utilities Commission has regulated radiotelephone utilities (RTUs) since 1961. The CPUC first exercised its jurisdiction in Decision 62156 (1961) 58 CPUC 756.

This Commission considered deregulation of RTUs in 1977 in Case No. 10210, which resulted in no substantive changes in regulatory policy toward RTUs. In its Order Instituting Investigation (OI), the Commission cited a number of "changed circumstances" that prompted it to re-examine the need for regulation of the industry. The OI stated that many more frequencies had become available for RTUs' use, and that customers could choose between RTUs, landline companies' radio services, nonutility shared repeaters, or a customer-owned system. The Commission believed that the RTUs, and the Commission incurred tremendous costs in contesting matters before the FCC. The OI also suggested that many California RTUs were only corporate shells, which obtained common carrier

frequencies and then conducted most of their utility operations through nonutility affiliates or agents, enabling RTUs to avoid CPUC regulation. Finally, the Commission believed that deregulation might be appropriate because the Commission's work consisted primarily of protecting existing RTU service areas and of mediating the internecine battles of the radiotelephone industry.

Only two parties to the OI advocated any form of deregulation: the California Mobile Radio Association and the National Association of Business and Educational Radio. The staff, the overwhelming majority of the RTU industry, and the wireline utilities strongly supported continued regulation.

In Decision (D.) 88513 (1978) 38 CPUC 461, the Commission found that the Public Utilities Code required the Commission to regulate radiotelephone utilities and wireline telephone companies with respect to their providing two-way radio and one-way paging services to the public. The decision also stated that the Commission had no authority to regulate the operations of private mobile radio communications licensees. The only change in the status quo effected by D.88513 was the revision of service area maps under a uniform method of measurement described in the Carey Report (FCC Rules 22.504); this action was intended to reduce costly and wasteful litigation before the Commission.

In 1983, the Commission issued D.83-08-059 as a result of another OI. This OI was a response to the FCC's decision to increase the number of frequencies available for paging operations. This decision revised Rule 18(o) to make it more difficult for an existing carrier to oppose new entrants or to block the expansion plans of a competitor. Since then, most certification procedures have been perfunctory, and territories that were previously served by only one RTU may now be served by several.

In the early 1980s, a Commission resolution revised the CPUC regulatory funding surcharge on RTUs to make it more consistent with the surcharge on more conventional services. This surcharge now applies to RTUs the standard percentage of interstate revenues used for surcharging basic services.

The Nature of Radiotelephone Services

The RTU industry offers two major types of services: two-way radio service and paging (which is usually one-way but may be two-way). Both RTUs and private mobile radio providers may be connected to the public switched network; the only distinction is that RTUs offer services to the general public.

Conventional two-way radio car phones offer mobile telephone service via FM radio frequencies in the Public Land Mobile Service (FCC Rules & Regulations Part 22.501). Conventional car phones have been supplanted for the most part by cellular phones.

However, the market for paging has continued to grow rapidly. Paging is the capability to send a message to someone carrying a portable receiver. The message can be a simple beep, indicating that the recipient should contact an answering service or a pre-determined number; it can be a phone number or alpha-numeric message displayed on the receiver; or it can be a short voice message. Some pagers permit very short two-way conversations. Though paging has historically been a local service, recent advances in technology now support nationwide paging via satellite.

Other services offered by RTUs include marine radio services, rural radio services (which substitute for basic phone service in extremely remote areas), point-to-point microwave, and radio-to-radio services that allow a mobile user to communicate with other users by leaving messages at a base station.

Structure of the Radiotelephone Industry

The industry consists of 91 specialized radiotelephone utilities (some of which are subsidiaries or affiliates of one another). All the larger wireline utilities — including Pacific Bell (and Pacific Telesis), GTE California, Continental, Citizens, and Roseville — and six smaller independents also offer radiotelephone services. Some of the larger wirelines have recently acquired a number of smaller RTUs. As a result, many of the channels that the FCC originally allocated to non-wireline RTUs are now owned by subsidiaries or affiliates of wireline

companies. Non-wireline RTUs have also consolidated in recent years. Overall, the industry has consolidated into fewer, larger firms.

Many of the wireline companies, including the Bell Operating Companies, are not only expanding their paging operations but also consolidating paging services with cellular. This allows them to market such services jointly and to avoid regulatory scrutiny where paging services had previously been regulated as part of a monopoly LEC operation.

In recent years, the FCC has allocated a greater number of frequencies to paging. Many of these frequencies had been used for two-way mobile car services, for which demand dropped when cellular phones became available. The FCC also opened up entirely new spectra (900 MHz) for paging. Thus, although the number of available frequencies still represents an upper limit on the number of firms that could enter the field, it has not posed a barrier to entry in the past few years (since the advent of cellular phones).

Most of the RTUs are members of Allied Radiotelephone Utilities of California. In November 1987, after negotiations with Allied, Pacific proposed a Radio Carrier Access Tariff (RCAT). The RCAT is designed to be a standard tariff offered from Pacific Bell regarding RTU access to the public switched network. Under the present arrangement, each RTU files a separate contract specifying the terms of its interconnection. The RCAT would replace this melange of contracts with a single, standardized tariff. The RCAT proposal has raised the question not only of how much RTUs ought to pay for interconnection, but also of what type of interconnection the wireline utilities should provide to RTUs.

Currently, RTUs are connected to the public switched network by Type One interconnection — that is, by means of DID and DOD trunks that link an RTU office directly to wireline company end offices. Allied contends that RTUs ought to enjoy Type Two interconnection, which uses a tandem switch to route calls to various end offices. Since the tandem eliminates all the direct links to end offices, Type Two interconnection would be more efficient and therefore cheaper for the RTUs. RTU

customers would also avoid toll charges. Tandem interconnection would demand a higher level of technical sophistication from the RTUs. To date, the LECs have not permitted RTUs Type Two interconnection, although a number of cellular phone companies already enjoy tandem interconnection.

The Commission's Current Regulatory Framework

A new RTU must first approach the FCC for a license and authorization to use certain frequencies in a certain geographical area. Since more than two RTUs may compete in any given area, competition for licenses is less fierce for RTUs than for cellular firms.

The Commission currently regulates entry of RTUs by requiring prospective RTUs to apply for a Certificate of Public Convenience and Necessity (CPCN); this is done by application, but RTU CPCNs are rarely protested and serve mainly to keep the commission staff informed about which companies are offering service. Approval is usually routine.

The Commission also regulates the prices RTUs are allowed to charge for services (but not the prices charged for rental of equipment, such as pagers). Companies whose gross annual revenues exceed \$750,000 must file a formal application in order to raise rates; all other companies may file increases by advice letter (with supporting material). For rate decreases, companies generally must show that their rates are compensatory — that is, that the proposed rates will cover costs and will not constitute predatory pricing. Rate changes for radiotelephone services offered by an LEC are considered in that LEC's general rate case.

When someone wants to buy an RTU, or if an RTU wants to offer stock, no transaction can occur until the Commission approves a company application. The Commission also mediates disputes over service areas, reviews tariff filings, monitors service quality, and requires companies to submit annual reports.

Because of technological advances, paging services are no longer purely local. A person in New York can page another in San Francisco. This capability is so new that the FCC has not

taken any action to regulate paging on an interstate basis, nor has the Commission regulated interLATA paging any differently than intra-LATA paging.

The Commission would like to revisit its policies for regulating radiotelephone services. The Commission is interested in studying whether less restricted competition might lead to cheaper and/or better services and whether the benefits of the current regulatory system exceed its costs. Greater interest in the regulation of RTUs has also arisen as a result of the booming growth in the cellular telephone industry, changes in RTU technology, and the dynamic state of telecommunications in general.

Questions and Issues Regarding Regulation of RTUs

To assist the Commission in its study, we are requesting that radiotelephone utilities, wireline companies, RTU customers, and other interested parties provide comments to us. These comments should specifically address the following questions:

A. Regulatory Goals and Frameworks

1. What goals should the Commission seek to achieve in its regulation of radiotelephone services?
2. Given the goals described in Question 1, would full or partial deregulation of RTUs and/or the wireline companies' radiotelephone services be in the public interest? What would be the costs and the benefits?
3. Do any aspects of radiotelephone regulation need to be strengthened rather than reduced, given the above goals? Again, please describe the costs and the benefits.
4. What complaints do customers voice against RTUs and wireline mobile carriers? Is regulation necessary to handle the complaints?
5. Please compare the costs and benefits of the following aspects of our current regulatory program. Based on their costs and benefits, for which of these aspects should the Commission consider alternatives to its

current regulation?

- Entry through certificates of public convenience and necessity
- Expansion of service
- Arbitration of service area or other disputes
- Antenna siting under CEQA
- Tariff filings
- Rate increases
- Quality of service
- Accounting procedures and annual reports
- Stock sales and transfers of ownership
- Interconnection with wire line telephone system
- Customer complaints

6. Should any segments of the industry be treated distinctly? Please consider such areas as specialized RTUs versus wirelines; paging versus mobile car services; rural radio services versus those services that cannot be considered "basic" telephone service. In particular, given that the wirelines' radiotelephone services are now subject to cost-of-service regulation through the general rate case process, how would greater pricing flexibility for RTUs affect the wirelines' ability to compete?

7. Does the presence of agents (which function much like resellers in the cellular industry) require any regulatory response?

8. What regulatory options would require enabling legislation? If such legislation were necessary, what legislation should the Commission support?

B. Competition, Economic Efficiency, and Market Power

9. How competitive are RTU services? Are there elements of the services that are bottleneck monopolies? Specifically, what is the proper role of LECs in providing access to networks and functions required by non-wireline RTUs? Should the Commission impose specific non-discriminatory access requirements to preclude anticompetitive conduct?

10. What constitutes the basis for

competition between radiotelephone service providers: prices, type of service, service quality, or a combination of these factors? Do RTU services compete with other services as substitutes? Are RTU services complements to any other services? What has the trend been in RTU rates?

11. How easy are entry and exit for radiotelephone service providers? How do entry and exit characteristics currently affect the level of competition in the industry? How could alternative forms of regulation affect the ability of firms to enter or exit? Does the limited number of unused frequencies constitute a significant barrier to entry, now or in the future?

12. To what extent does consolidation of firms represent a threat to competition? How concentrated would the industry likely become under deregulation? Does consolidation offer any benefits (such as economies of scale, better-coordinated services, etc.)? Given that a great deal of consolidation has already occurred, should the CPUC take any regulatory action to prevent anticompetitive behavior? What role does the CPUC have with respect to the policies of the FCC in this area?

13. To what extent does the current system allow opportunities for improper cross-subsidies? Are wireline utilities able to evade regulatory treatment through cross-subsidies between subsidiaries or affiliates? Can RTUs cross-subsidize operations through the use of agents or other unregulated entities? How would alternative regulatory schemes affect opportunities for cross-subsidization? Under what circumstances should the Commission be concerned about cross-subsidies? What type of accounting or structural separation requirements would be necessary to guard against improper cross-subsidies?

14. Does the joint offering of cellular and paging services raise any regulatory issues?

15. How do different types of regulation affect the pricing of services? What steps could the Commission take to encourage the lowest prices? Are there any seriously distorted prices under the current system? How

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do current rates differ from the rates that would result from alternative regulatory scenarios? Under what circumstances, if any, might predatory pricing by larger firms become a problem?

16. How does regulation or its absence affect the quality and availability of services? Does our regulation provide consumers with a choice of a range of quality, where lower quality is reflected in lower prices? How does the availability of RTU service vary among geographical regions?

17. How expensive is our regulation? Would decreased costs of regulation be passed on to customers in lower rates?

C. RTUs and Universal Service

18. Does the social role of any RTU service necessitate or justify continued regulation? What social importance will RTU services have in the future? In what areas do RTUs provide basic telephone service?

19. Under an alternative regulatory scheme, how should rural radio services — which are stationary services that provide basic telephone services in isolated areas — be treated? How many customers currently rely on rural radio service for basic service? How do rates for rural radio services compare to rates for ordinary basic service? How will rural radio service markets change in the future?

20. How would any proposed regulatory change affect the provision of basic telephone services by LECs? Do RTUs provide any subsidies to basic services (through interconnection access charges, for example)? Conversely, do basic services in any way subsidize the LECs' radiotelephone services?

21. What implications does technological change hold for regulation, now and in the future? Does technological change pose a significant threat of bypass of the local exchange companies' networks?

D. Interagency Issues

22. What actions has the FCC taken recently and what actions is it planning to

take in regulating this industry? Are any of our regulatory actions duplicative? Do any FCC actions require a CPUC response?

23. What regulatory treatment, if any, would be appropriate in response to the development of nationwide and interLATA paging? What should be the FCC's and the CPUC's respective roles in this area?

24. Should the Commission continue to be the lead agency for CEQA with respect to siting of RTU facilities? Should the Commission establish a categorical exemption under CEQA with respect to proposed antennae that would be located on existing antenna farms or microwave towers?

E. Generic and Procedural Issues

25. Should the Commission consider any other RTU or joint cellular/RTU issues?

26. How should any proposed regulatory changes be implemented? Would implementation of changes for wireline companies' radiotelephone services require any special treatment, since such services may share facilities with monopoly services?

27. After receiving parties' responses to the questions set forth in this Rulemaking, a proposed Rule will be drafted and comments will be solicited before a final Rule is adopted. We hope with this process to avoid protracted hearings, but will preserve the option of converting this Rulemaking to an investigation at a later date should evidentiary hearings prove necessary.

ORDER

IT IS ORDERED that:

1. Rulemaking is hereby instituted on the Commission's own motion into the regulation of radiotelephone utilities.

2. All radiotelephone utilities subject to the jurisdiction of the Commission are made respondents to this rulemaking and are invited to present their comments on the above questions. Other parties are also invited to submit comments.

3. On or before April 22, 1988, any interested parties and the Division of Ratepayer

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Advocates shall file comments regarding the above questions.

4. Parties filing reply comments must do so on or before May 13, 1988.

5. Parties shall file an original and 12 copies of any comments to the Commission's Docket Office. Each party submitting comments shall make a copy of its comments available to any person on request.

The Executive Director of the Commission shall cause a copy of this order to be sent by regular mail to all radiotelephone utilities certificated in California.

This order is effective today.

Dated February 10, 1988, at San Francisco, California.

STANLEY W. HULETT

President

DONALD VIAL

FREDERICK R. DUDA

G. MITCHELL WILK

Commissioners

Commissioner John B. Ohanian, being necessarily absent, did not participate.

(END OF APPENDIX A)

APPENDIX B

Aalert Paging Company of Sacramento,

San Francisco, and San Diego

Airsignal of California, Inc.

Allcity Paging

Allied Radiotelephone Utilities Association of California

American Paging Inc. of California

Cal Autofone and Radio Electronic Products Corporation

Cellular Resellers Association, Inc.

Citizens Utilities Company of California

Crico Communications Corporation of San Jose

Division of Ratepayer Advocates

Dodge, Jr. Willard A.

GTE California, Incorporated

Metromedia Paging Services Group

Mobile Communications of California, Inc.

Pacific Bell

PacTel Paging
Radio Relay Corporation of California and
Electropage, Inc.
R. L. Mohr, dba Radio Call Corporation

(END OF APPENDIX B)

APPENDIX C
Page 1

Summary of Respondents Positions

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X Ref to OIR question/ areas	AA	Alert	Air	All	Allied	Amer.	Cal	CRA	Citi-	Crico	DRA	Dodge	GTBC	Metro	Mobile	Pac	Pac	Radio	Radio	Total		
																				Y	N	A
A. Should RTU industry be deregulated?	N	Y	-	N	N	N	-	-	-	Y	N	Y	N	N	Y	Y	N	N		5	9	4
A. Should RTU industry be deregulated?	N	Y	N	N	N	N	-	-	-	Y	N	-	Y	N	Y	N	N	-		4	9	5
A..C. Should rural MTS be regulated separately from paging?	-	-	-	-	-	Y	-	-	-	TED	-	Y	Y	-	Y	-	-	-		4	0	13 (1-TED)
A. Should a rate band be introduced?	-	-	-	Y	-	-	-	-	-	N	-	-	-	-	Y	N	Y	Y	N	4	3	11
A. Should Comm. regulate RTU-LEC inter-connection?	Y	Y	-	Y	Y	Y	-	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	-	13	2	3

APPENDIX C
Page 2

Summary of Respondents Positions - cont.

X Ref to OIR question/ areas	AA	Alert	Air	All	Allied	Amer.	Cal	CRA	Citi-	Crico	DRA	Dodge	GTBC	Metro	Mobile	Pac	Pac	Radio	Radio	Total		
																				Y	N	A
Is RTU status clearly established?	N	Y	-	Y	-	Y	-	-	Y	N	Y	-	Y	Y	Y	Y	-	Y	Y	10	2	6
A. Should regulation be streamlined?	Y	Y	Y	Y	Y	Y	-	-	-	Y	Y	-	Y	Y	Y	Y	Y	Y	-	13	0	5
A. Should Comm. extend statewide certificates?	Y	Y	-	-	-	-	-	-	-	-	Y	-	-	-	-	-	-	Y	-	4	0	14
A. Should accounting procedures be continued?	N	-	-	-	-	Y	-	-	-	Y	Y	-	-	-	-	N	-	-	-	3	2	13
B. Is the RTU industry competitive?	Y	Y	Y	Y	Y	Y	-	-	-	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	15	0	3

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Summary of Respondents Positions - cont.

X Ref to OIR question/ Areas	Alert	Air	All	Allied	Amer.	Cal	CRA	Citi-	Crico	ERA	Dodge	GTEC	Metro	Mobile	Pac	Pac	Radio	Radio	Total
	Sig- nal	City				Auto- fone		zens					Media	Comm	Bell	Tel	Relay	Call	Y N A
B. Are there signifi- cant bar- riers to entry?	N	-	-	N	-	-	-	-	-	N	N	N	N	N	N	N	-	-	0 9 9
B.,C. Is cross subsidiza- tion a problem?	-	-	-	Y	-	Y	-	-	-	TBD	Y	N	Y	-	N	N	-	-	4 3 10 (1*-TBD)
B. Is preda- tory pri- cing a concern?	-	N	Y	Y	-	Y	-	-	-	N	Y	-	N	-	N	-	Y	-	5 4 9
B. Is consoli- dation a threat to competi- tion?	N	Y	Y	-	-	Y	-	-	-	N	-	Y	Y	N	N	-	-	-	5 4 9
B. Should Comm. re- gulate joint cal- lular/radio telephone offerings?	-	-	-	-	-	-	Y	-	-	-	-	Y	-	-	-	-	-	-	2 0 16

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Summary of Respondents Positions - cont.

X Ref to OIR question/ Areas	Alert	Air	All	Allied	Amer.	Cal	CRA	Citi-	Crico	ERA	Dodge	GTEC	Metro	Mobile	Pac	Pac	Radio	Radio	Total
	Sig- nal	City				Auto- fone		zens					Media	Comm	Bell	Tel	Relay	Call	Y N A
B. Is effect of regula- tion on price, quality, & availabi- lity of service minimal?	Y	-	-	-	-	-	-	-	-	Y	Y	-	Y	N	N	-	-	-	4 2 12
C. Is paying an optional service?	Y	Y	-	-	-	N1*	-	-	Y	Y	N2*	Y	Y	Y	-	Y	-	-	8 2 8
A. Should Comm. con- tinue to handle con- sumer com- plaints?	N	-	Y	Y	-	-	-	-	-	N	Y	-	N	Y	N	N	Y	-	5 5 8
A. Should Comm. re- gulate agent- carrier relation- ship?	N	-	-	Y	-	-	-	-	-	N	Y	-	N	-	N	Y	Y	-	4 4 10

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Summary of Respondents' Positions - cont.

X Ref to OUR question/ answer	Alert Air All Allied Amer. Cal CBA Citi- Crisco ERA Dodge GTEC Metro Mobile Pac Pac Radio Radio sig- City rel	Auto- zone	fence	Media Comm Mail Tel Relay Call	Total Y N A
D. Should Comm. maintain CBA lead agency role?	Y	Y	-	-	Y
Y = Yes					8 1 9
N = No					(2-TDD)
A = No comment					
TDD = Further hearing required					

1* = may provide essential services for consumers whose lifestyle require mobility
2* = no different in character than any other telephone service

(END OF APPENDIX C)

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APPENDIX D

Service List For Further Comments

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State Service:
State Board of Equalization
Louis E. Meyer
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Sacramento, CA 94279-0001

(END OF APPENDIX D)

APPENDIX E

REVISED RULE 18(a)

(a) In the case of an application to furnish one-way paging or two-way mobile radiotelephone service (other than cellular mobile radiotelephone service), the following requirements apply in addition to those enumerated in Rules 1 through 8, 15 through 17.1, and (a), (b), (d), first sentence of (f), (g), (h), and (i) above:

(1) When the applicant obtains the relevant construction permit from the Federal Communications Commission (FCC) it shall, no later than 30 days after the grant of the relevant construction permit(s), submit its application. When an applicant files for the relevant construction permit from the Federal Communications Commission (FCC) and the FCC public notice period has expired, it may at any time thereafter submit its application to this Commission, and a legible copy of its FCC permit(s), to this Commission. The proposed new service area, or the effect of changed facilities on the utility(s) existing service area, if any, will be shown on a fully legible engineering service area contour map, of suitable scale, prepared in accordance with the applicable criteria set forth in 47 CFR 22. The use of aeronautical charts for this purpose is unacceptable.

(2) Each application shall address the following matters in a substantial manner and with particularity, consistent with the scope of the authorization sought:

(A) Demonstration that the proposed service is responsive to public need and demand.

(B) Technical feasibility of the proposed system and the technical competence of the applicant.

(C) Description of the proposed service including terms, conditions, area of coverage, quality, and features of service, and differences from any service presently provided in the proposed service area.

(D) Financial responsibility of the applicant.

(E) Economic feasibility of the proposed service in the market to be served.

(F) Present operations of the applicant and affiliated companies.

(3) Should an existing utility protest such application, the burden shall rest with the protestant to show that the application should not be granted by affirmatively establishing that granting the application will so damage existing service or the particular marketplace as to deprive the public of adequate service. The protest shall conform to Rules 8.1 through 8.8 of the Commission's Rules of Practice and Procedure. A service map of protestant's claimed service area shall be filed with the protest. Protests of a general or nonspecific nature will not be sufficient to warrant consideration by the Commission.

(4) Should an existing utility propose to provide service in an area contiguous to its authorized service area and not presently receiving radiotelephone service by any utility, an application for a certificate need not be made, but the engineering data required in (1) above shall be provided to the Commission staff.

(5) Should an existing utility propose an extension of service area which it believes to be minor in nature, but to which (4) above is inapplicable, it shall submit the relevant engineering data to the Commission staff, with a written request for determination of the necessity for a certificate application. Reply will be by letter from an authorized representative of the Commission's Communications Division. In general, an extension will be considered minor if it does not overlap the radio service area of another utility by more than 10% of either utility's radio service area and also does not provide substantial coverage of additional major communities.

(6) Actions as described in (4) or (5) above, or actions such as construction of fill-in transmitting facilities which do not affect service area boundaries, shall be described in tariff revisions which shall be promptly filed by the utility.

(END OF APPENDIX E)

FOOTNOTES

¹Re Alternative Regulatory Frameworks for Local Exchange Carriers (1989) 33 CPUC 2d 43.

²Re Siting and Environmental Review of Cellular Mobile Radiotelephone Utility Facilities (1990) 36 CPUC 2d 133 and Re Regulation of Cellular Radiotelephone Utilities (1990) 36 CPUC 2d 464.

³Modification of Tariff Rules for Nondominant Interexchange Telecommunications Carriers (1990) 35 CPUC 2d 275 and Re Tariff Filing Rules for Telecommunications Utilities, Other than Local Exchange Carriers and AT&T-C (1990) 37 CPUC 2d 130.

⁴The complete list of questions asked in the order instituting this rulemaking proceeding is contained in Appendix A.

⁵A list of parties filing comments and reply comments is contained in Appendix B. A chart of each party's answer to each question is contained in Appendix C.

⁶See Appendix A.

⁷See Appendix B.

⁸See Appendix A.

⁹See footnotes 1, 2, and 3 above.

¹⁰Improved mobile service allows a customer to "roam" throughout the state without service disruption. (DRA Comments, pp. 3.3-3 and 3.3-4.)

¹¹In 1988, the FCC allocated additional radio channels to be used for BETRS. BETRS serves as an alternative to basic telecommunications service in rural service areas, especially those "hard to reach" places for conventional wireline technology. BETRS uses radiowaves to connect rural customers with the public switched toll network. All LECs have the option of employing this technology if it proves to be more cost-effective than installing wire. Citizens Utilities Company of California (Citizens) and GTB West Coast, LECs in Northern California, currently employ this service in portions of their service territories. Continental Telephone Company (Contel) also uses BETRS in its service territory in Southern California. Also in 1988, the FCC accepted and granted applications for cellular service in California's 12 Rural Service Areas (RSAs). Presently, all 12 RSAs have at least one facility-based carrier providing cellular telephone service.

¹²Rural radio service. A public radio service rendered by fixed stations on frequencies below 1000 MHz used to provide (1) Basic Exchange Telecommunications Radio Service, which is public message communication service between a central office and subscribers located in rural areas, (2) public message communication service between landline central offices and different exchange areas which is impracticable to interconnect by any other means, or (3) private line telephone, telegraph, or facsimile service between 2 or more points to which it is

impracticable to extend service via landline."

¹³As of September 27, 1991, there are 97 certificated RTU carriers.

¹⁴The Herfindahl index (H-index) is a statistic which captures the industry concentration level. When an industry is occupied by one firm, a pure monopolist, the H-index is at its maximum value of 1.0. The value declines with increases in the number of firms and increases with rising inequality among any given number of firms. If all firms have equal market shares, the H-index will fall toward zero as the number of firms increase. The H-index formula squares each market share which results in large firms being given more weight than small firms. In 1985, the H-index for paging services was 0.20 and in 1987, 0.16. The H-index for two-way mobile services was 0.16 in 1986 and 0.15 in 1987. Both measurements are considered low levels of concentration. (DRA Comments, pp. 3.2-18 and 3.2-19.)

¹⁵The concentration ratio is the percentage of total industry sales contributed by the top firms in the total market. It is common to report the top four and eight firm concentration ratios for an industry. The top four firms in the RTU industry controlled 71% of paging sales in 1987, while the top eight firms controlled 90%. If Pacific and GTBC wireline paging revenues are added to these statistics, these concentration ratios fall to 66% and 85%, respectively. The concentration ratios for two-way mobile services are similar. The top four and eight firms providing two-way mobile service control 69% and 89% of 1987 sales, respectively. (DRA Comments, p. 3.2-17.)

¹⁶The common carrier referred to in this statute is defined in Public Utilities Code § 211 as a carrier providing transportation services.

¹⁷Section 766 states, in part: "... if such telephone or telegraph corporations do not agree upon the division between them of the cost of such physical connection ... the Commission may after further hearing, establish such division by supplemental order."

¹⁸Pacific withdrew the proposed RCAT on Nov. 16, 1987 and has subsequently filed numerous inter-company agreements for Type 2 interconnection.

¹⁹After the comments in this proceeding were filed, the Commission granted Pacific and GTEC rate flexibility which eliminates the requirement for regular rate applications. (D.89-10-031.)

²⁰See footnotes 14 and 15, above.

Re City of Oceanside

Decision 92-01-017
Application 90-04-045

California Public Utilities Commission
January 10, 1992

APPLICATION by municipality to reopen a closed at-grade crossing in furtherance of a downtown revitalization program; denied.

1. CROSSINGS, § 20 — Commission jurisdiction — As to approval of at-grade crossings — As to requiring separation of grades.

(CAL.) No road or highway may be constructed at-grade across railroad tracks unless first approved by the commission, and the commission has exclusive jurisdiction to require a crossing to be at separated grades instead. p. 49.

2. CROSSINGS, § 40 — Types of crossings — At-grade crossings — Reopening of closed crossing — Factors affecting disapproval.

(CAL.) A municipality was not allowed to reopen a closed at-grade crossing of a downtown street over railroad tracks, where (1) the original closing had been part of a still-valid relocation agreement with the railroad, (2) a crossing at separated grades would be much more practicable from a public safety standpoint, and (3) the city failed to submit engineering studies in support of its proposal. p. 49.

APPEARANCES: Vera M. T. Todorov, Attorney at Law, for the City of Oceanside, applicant. Messrs. Hill, Farrer & Burrill by R. Curtis Ballantyne, Attorney at Law, for The Atchison, Topeka and Santa Fe Railroad Company; James P. Jones, for The United Transportation Union; Ron Sclaro, for Amtrak; and Sharon Greene and Joana Capelle, for Los Angeles - San Diego Corridor Agency;

protestants. Raymond R. Toohey, for the Safety Division.

BY THE COMMISSION:

OPINION

The City of Oceanside (Oceanside) seeks authority to construct an at-grade crossing across the main line tracks of The Atchison Topeka and Santa Fe Railway (AT&SF) at Third Street in Oceanside. The application is protested by AT&SF, the United Transportation Union (UTU), Amtrak, Los Angeles - San Diego Corridor Agency (Corridor Agency). The Commission's Safety Division filed an appearance and expressed its opposition to the application.

Public hearings were held before Administrative Law Judge O'Leary at Oceanside on November 8, 1990, January 3, 4, 30, and 31, 1991. The matter was submitted subject to the filing of late-filed Exhibit 39 and the filing of concurrent briefs by the parties no later than September 3, 1991. Briefs were filed by Oceanside, AT&SF, and the Safety Division.

Background

On December 19, 1984, AT&SF and Oceanside entered into an agreement (relocation agreement) whereby AT&SF agreed to the relocation of its switching yard and related trackage from downtown Oceanside to the Camp Pendleton Marine Corps Base located north of Oceanside. The agreement also provided for the construction of a new at-grade crossing at Mission Avenue. The agreement also provided for the closing of the existing at-grade crossings at Third Street and Tyson Street.

On May 16, 1988, Oceanside filed Application (A.) 88-05-033 seeking authorization from this Commission for the construction of the Mission Avenue at-grade crossing. That application alleged in part that:

"The principal need associated with establishment of a crossing at grade for MISSION AVENUE is the improved circulation

within the downtown area of Oceanside and related beach access.

"The immediate benefits gained for downtown include direct access from Interstate 5 (located about one mile east of the new crossing) to the waterfront area, including beaches and the new Oceanside Pier; better spacing of track crossings; improved visibility; safer road-railroad approaches including a boulevard with medians at the track crossing; improved crossing surfaces; and direct access to waterfront parking and recreational facilities.

"In addition to MISSION AVENUE serving as the central east to west arterial connecting freeway to waterfront, it will serve as a view corridor from the freeway out to sea. It also provides the most direct access to the Oceanside Transit center presently serving sixteen Amtrak trains daily. The center also serves multiple local transit bus routes, including some that cross the railroad. The new MISSION AVENUE crossing will provide a smoother crossing with improved visibility for drivers of transit buses.

"The MISSION AVENUE crossing is included in the Master Street Plan for Oceanside and was a consideration in switching yard relocation agreements and local coastal plan certification."

A.88-05-033 was not protested. It is apparent that no protest was filed by AT&SF because of the terms of the relocation agreement. On August 24, 1988, we issued Decision (D.) 88-08-053 authorizing Oceanside to construct Mission Avenue at grade across the tracks of the AT&SF.

In June of 1989, the Mission Avenue crossing was opened and the Third Street crossing was closed. The Tyson Street crossing was closed prior to the filing of A.88-05-033. Mission Avenue is located one block south of Third Street.

This application seeks the reopening of the same at-grade crossing that was closed due to the opening of the crossing at Mission Avenue.

Applicant's Position